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THE PROBLEM OF GOVERNMENT

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THE PROBLEM OF GOVERNMENT

WITH SPECIAL REFERENCE TO AMERICAN INSTITUTIONS AND CONDITIONS

BY CHESTER COLLINS MAXEY, PH.D.
Miles C. Moore Professor of Political Science in Whitman College

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STATE NORMAL COLLEGE CHADRON, NEBRASKA

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PUBLISHED, NOVEMBER, 1925
SECOND PRINTING, SEPTEMBER, 1926

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TO MY MOTHER

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PREFACE

Progressive teachers of political science have always experienced greater difficulty with the introductory course than with any other subject in their field. Those who have been primarily concerned with the orientation of the student in the general field of political science have been inclined to favor an introductory course consisting of a broad survey of the basic theories and principles of government and of the outstanding characteristics of governmental organization and procedure in the leading states of the world. But such a course, involving, as it must, abstract philosophical concepts and unfamiliar institutions, is very difficult to present effectively to students of freshman and sophomore standing, who nowadays make up the bulk of the registration in introductory courses in political science. It is not so much that the content of such a course is beyond the mental reach of the student, as that it is so remote from everything that touches his daily life and experience that, though fully comprehended at the time of study or recitation, it makes no lasting impression and is not, therefore, assimilated to the stock of ideas which govern his thinking processes.

On the other hand, teachers whose chief aim has been to prepare the student for practical citizenship have been disposed to go to the opposite extreme and confine the beginner to a course of study consisting of an intensive and critical examination of his own government. There are serious objections to this type of course also. Experience has shown that a critical and exhaustive study of American government, when undertaken by students who lack the perspective and insight which come from familiarity with basic political ideas and from the comparative study of institutions, is likely to result in grave misconceptions, false emphases, and unsound conclusions.

Recognition of the shortcomings of the above-mentioned avenues of approach to the study of government has resulted in a widespread movement to avoid their disadvantages and preserve their advantages by a judicious combination of the two. College teachers are rapidly coming to recognize that the so-called "orientation courses" have in the past embodied far too much detail to afford a helpful

panoramic view of the field of politics and government, and that the traditional courses in American government have almost invariably included a great deal more minute fact material than is necessary to equip the student for constructive and intelligent citizenship. Instructors with the point of view of the specialist have delighted in such courses, but the unhappy student has been confronted with so many trees that he has rarely been able to see the forest. In recent years a great many teachers have discovered that it is possible, by careful selection and condensation, by emphasizing only fundamental and important facts, and by skillfully combining the concrete and the abstract, to cover in a single course of study all of the essentials both of general political science and of American government, thus combining intellectual orientation with preparation for citizenship in what has proved to be a very fruitful and popular manner.

This book represents an effort to provide a text-book which can be used as a basis for this new type of introductory course. It does not pretend to be an exhaustive treatise; but it does aim, in a simple, direct, and interesting fashion, to present basic facts and ideas which can be used as a foundation for the erection of a more elaborate super-structure at the discretion of the teacher. The book is not a reference book or an encyclopedia; it is primarily intended to serve as a Bædeker for the student and not as a source book for the instructor. Too many college text-books are written by professors in mortal dread of what other professors are going to say and think about them, and accordingly are cast in molds which render them far more useful to professors than to students. I have aspired to write a book for the student alone. The material is organized and presented in such a way that the student may easily lay hold of the essential facts and ideas, and an effort has been made to write in such a way as to facilitate the reading of the book by persons entirely unversed in the vernacular of political science. There is no sound reason why a student, in order to obtain a few fundamental ideas, should be obliged to wade through a morass of professional verbiage which can have meaning only for the specialist, if it has any meaning at all.

The book contains a large amount of material bearing upon social and economic problems. This is by design. I have a strong conviction that introductory courses in the social sciences have been much too highly specialized, and that a great deal of warped thinking has resulted from the fact that students have not been taught to view the social process as a whole. This book does not presume, of

course, to afford an adequate introduction to the fields of economics and sociology, but it does attempt to show how closely those subjects are dovetailed with matters of government. It also endeavors to present the problem of government in such a way that the student cannot fail to perceive the social and economic bases of government and to appreciate the profound significance of government in the social and economic affairs of life.

While the book has been written primarily for use as a college text-book, it may conceivably be of service to that increasing number of active business and professional people who are conscious of their civic responsibilities and desire to keep in touch with contemporary developments, trends, and points of view.

For special assistance in the preparation of this volume I am indebted to several persons whom I cannot adequately thank by formal acknowledgment in print. From Dr. Harry E. Barnes of Smith College I have received critical suggestions of incalculable value with respect to the plan and content of the book. To Dr. Raymond Moley of Columbia University I am indebted for a meticulous reading of the manuscript which has enabled me to avoid many errors, both of fact and of judgment. Dr. Charles W. Coulter of Ohio Wesleyan University has performed a similar service with respect to a number of selected chapters. Miss Doris Darmstadter, Assistant to the Director of the Citizens' League of Cleveland, and Mr. Ernest J. Bohn, Secretary of the Western Reserve Republican Club, both former students of mine, have aided me very materially in the reading of the proof. I am also deeply indebted to my wife for painstaking assistance in the preparation of the manuscript.

CHESTER COLLINS MAXEY

Mountain View Farm,
Veradale, Washington,
August, 1925.

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PART I

THE BASIC PRINCIPLES OF GOVERNMENT

CHAPTER I

MAN AND GOVERNMENT

The course of life of every person born into this world is profoundly affected by the government under which he lives. Whether he be a resident of the frozen North, a naked savage of tropical Africa, a child of the teeming Orient, an inhabitant of one of the states of war-haunted Europe, or a citizen of fortunate America—whatever his race or color, his country or station in life—he is, by the accident of birth, subjected to a system of government of some sort which more or less closely regulates and controls the most vital matters of his life—his family relations, his property, his occupation, his personal freedom, and even his religion—and from which he can escape only by becoming subject to another system of government having equal or greater power over him.

Speculative philosophers have often conjured up a picture of an imaginary state of nature in which mankind was supposed to have existed without government, and modern anthropological research lends weight to the supposition that there may have been a time, hundreds of thousands of years ago, when the progenitors of the human species were so near to the level of the brute that the thing we call government was impossible. However that may be, it is an unquestioned fact that throughout the entire recorded history of humanity and as far back in the prehistoric existence of the race as there is any evidence of social life among human beings, government has been a paramount factor in shaping the ends of human life. And it is also an established fact that as human society advances in the scale of progress, as civilization becomes more elaborate and complex, the dependence of man upon government and the importance of government in human affairs are enormously magnified. This truth is strikingly illustrated by the daily experiences of millions of American citizens.

Government in Everyday Life

The average person is politically conscious only upon extraordinary occasions. At election time, when the newspapers are

packed with political news and gossip, when the streets are bedecked with banners and placards, when roaring rallies are staged and blaring bands arrest the ear; on patriotic holidays, when work is suspended and flamboyant orators with fervid phrase depict the glory and greatness of the country; upon the receipt of his tax bill, which always seems higher than it ought to be; when some misstep brings him to account with the officers of the law—upon occasions such as these the average person gives more than a passing thought perhaps to the significance of government. But very rarely does he appreciate what government means to him every day and every moment of his life; how government underlies and conditions nearly everything that he does or can hope to do; and why government may influence the course of his life for good or ill, more perhaps than any other power on earth.

Without government no person in the United States could enjoy the conveniences and necessities of modern life for a single day. The city-dweller—and there are more than sixty million city-dwellers in this country at present—arises in the morning and proceeds at once to his bathroom where by a simple turn of the wrist he draws a tub of fresh, clear water, both hot and cold, for his bath. Does he wonder where the water comes from and how it happens to be thus at his command? Does he realize that he could not have pure and palatable water, indeed that he probably could have no water at all, but for the zealous activity of his government in establishing and operating a system of water supply or regulating the service rendered by a private water-supply company? Does it occur to him that the hot water which so greatly adds to the comfort of his morning bath is made possible by a gas or electric heater which could not function without being connected with a central gas or electric plant which is under governmental regulation and control, if not actually owned and operated by the government? Not at all; he usually takes all these things for granted.

Then he proceeds to the breakfast table. He is served, let us say, with a glass of milk, a bowl of cereal, a slice or two of toast, and some strips of bacon. The milkman delivered the milk long before daylight; the consumer knows nothing of its source or quality; but he drinks it with full assurance that it is clean and free from dangerous bacteria, and generally without realizing that his only assurance lies in the fact that the milk is produced and distributed by dairies that are subject to governmental inspection and control. The cereal, which probably came from a factory in a distant part of the country, is eaten in full confidence that it is free from con-

tamination and adulteration, and the eater is usually not conscious of the fact that his security results from strict governmental regulation of the manufacture and sale of such commodities. The bread, from which the toast was made, was produced in a bakery which doubtless the eater has never seen and by persons he does not know, but he is protected against its being unclean and unwholesome by governmental regulation and inspection of bakeries. The bacon probably came from a far-off packing plant and might conceivably have been produced from the carcasses of diseased animals, slaughtered under filthy and insanitary conditions; but if it bears the blue stamp which is indicative of government inspection the consumer is assured that such was not the case.

Upon finishing breakfast our typical citizen is ready for the day's work. He may ride to work in an automobile bearing a license plate signifying governmental permission to own and operate a car, consuming gasoline upon which in all probability a special governmental tax has been collected, and running over paved streets and highways which have been constructed by the government or under its supervision. Or if he does not drive an automobile, he no doubt rides to work in a trolley car or a subway train. These electric railways operate under a governmental franchise; the cars stop at points prescribed by governmental authority; and the rate of fare is fixed largely or wholly by governmental regulation. Even if he walks to work he cannot wholly escape contact with his government, because he must use streets and sidewalks that are subject to governmental control and must obey the traffic regulations which are imposed upon pedestrians as well as upon vehicles.

The work of the day will bring many more contacts with government. Should he be a student, the activities of the day will be subject to extensive governmental control. In a public school he will pursue a course of study prescribed by governmental authorities under the direction of teachers who are governmental employees. In a private school the subjects taught must to a large extent conform to standards laid down by public authority, and in many cases the school itself cannot exist without governmental sanction. If the work of the day takes him to store, office, or factory, there are scores of ways in which he may be affected by the multifarious activities of his government. Hours of labor, rates of wages, working conditions, sanitary facilities, building construction, and services of transportation and communication are a few of the many matters vitally affecting commerce and industry, which frequently come under governmental regulation and control. One cannot even mail

a letter or put through a telephone call without paying tribute to the omnipresent power and influence of government.

After the day's work most people are disposed to seek recreation. If one goes to the parks or playgrounds, he is usually on government property and subject to government control. If he goes to the theater, he is in a building constructed according to governmental specifications to insure protection against fire and accident, and must witness a picture or performance that has been censored by governmental authority. If one is addicted to the radio, he cannot but be aware that broadcasting is gradually coming under public control, and that the time is not far distant when rigid governmental control will be generally applied.

The foregoing are but a few of the many possible illustrations of the way in which every individual is constantly and continuously dependent upon his government. Not all of the illustrations given would apply in the rural sections of the country, but that does not mean that the farmer is less dependent upon government than the urbanite. The farmer may not need governmental assistance in providing his domestic water supply, his light and fuel, and much of his food; but he is desperately in need of governmental aid along other lines, such as marketing, credit, roads, eradication of pests, and the like. The important point is that the personal well-being, the happiness, and the satisfaction in life of every individual are closely bound up with the character of the government under which he lives. Let us briefly consider the matter from that point of view.

Government and Physical Well-Being

The first essential of life is health. Among the many things which are indispensable to the enjoyment of good health are pure food and uncontaminated water. Under modern urban conditions (and to a certain extent even in the rural districts) it is impossible for any individual, rich or poor, to be certain of obtaining these necessities without the assistance of governmental inspection, regulation, and control. Second only to food and water in the protection and promotion of health is the adequate and proper disposal of human wastes. The sanitary measures necessary to accomplish this are impossible under urban conditions without governmental activity in the construction and maintenance of sewers, the disposal of garbage and other refuse, and the enforcement of sanitary regulations. Then there are certain diseases, known as contagious or communi-

cable diseases because of the ease with which they are transmissible from person to person. When one is afflicted with one of these diseases, say smallpox or scarlet fever, he must be kept away from other people until the danger is past; and only the government has the authority and the power to isolate such persons and keep them under restraint until they are no longer a menace to others. Furthermore, there are certain preventive measures, such as innoculation and vaccination, which are deemed invaluable in arresting the spread of communicable diseases; and it is only by governmental mandate that people may be compelled to submit to these measures.

In many occupations there is great peril to life and health by reason of diseases caused by insanitary working quarters or noxious industrial processes, or because of the employment of dangerous machinery. To protect the life and health of people who must follow these occupations it has been necessary to use the power of government to compel employers to install safety devices and adopt methods of counteracting industrial conditions that induce disease. Modern life makes it necessary for millions of people every day to ride in railway trains, trolley cars, and motor "busses"; and in order to safeguard the lives of these many passengers and prevent the dissemination of diseases it has become necessary for the government to force common carriers to use approved safety appliances, to provide proper sanitary conveniences, and to take other precautionary measures.

These few examples show how vitally important is the work of government in the conservation and improvement of the health and physical welfare of all the people. A thorough analysis of the matter, if space were available, would prove most conclusively that if it were not for the constant and far-reaching activity of government in the protection and promotion of public health, each person's chance of enjoying good health and living out the span of years supposedly allotted to man would be immeasurably less than it is.

Government and Rights of Person and Property

Among the things most essential to individual happiness and satisfaction in life is the enjoyment of personal freedom and the right to own and use property. So highly do we value these privileges that they have been quite commonly looked upon as inherent and inalienable rights which attached to man before government was instituted, and with which government can interfere only under most extraordinary circumstances. But the more we learn about the

origin and development of our institutions, the more we are brought to realize that this is a mistaken point of view. The fact is that rights of person and property never have existed and never can exist without government, and it may be said with strict scientific accuracy that government is the author and protector of all personal and property rights.

Men were never free from tyranny and oppression, they never enjoyed freedom of religious worship, they never had liberty of thought and expression, they were never secure in their homes and possessions, they never had a guaranteed right to acquire, use, and dispose of property, until all those rights were established and maintained by government. And even under the worst sort of government there is more possibility of enjoying personal and property rights than there is in a state of anarchy and chaos, or in a state of savagery so primitive that government cannot exist. Therefore, whatever a person enjoys or may expect to enjoy in the way of personal freedom and property rights depends upon the government under which he lives. Under democratic institutions, of course, it is the business of government to protect and conserve the personal and property rights of *all* the people; and consequently if unrestricted freedom of person and property should enable one person or one group of people to impair the personal and property rights of others, the government must intervene and impose limitations upon those who are using their freedom to the harm of others.

Government and the Individual's Occupation in Life

To each person his vocation or life-work is a matter of supreme concern. It makes no difference what occupation he may choose, he is anxious to succeed and to enjoy to the maximum the possibilities it affords. It is important, therefore, to realize the extent to which one's vocational career may be affected by his government.

Let us suppose, for example, that a person is aiming at a professional career, such as law, medicine, dentistry, teaching, or nursing. To enter such a profession he must have a special kind of education, and in preparation for this he must go through the elementary schools, the high schools, and sometimes through college. For opportunity to do this he is indebted largely, if not entirely, to his government. When he comes to take up his professional studies, he must in most instances follow a course of study prescribed in large part by public authority; and before he can enter upon the practice of the profession, he must pass an examination pre-

pared and administered by government officials. And after admission to the practice of the profession, he must abide by the laws and regulations established by the government for the control of that profession.

If one enters upon a business career, he will feel the long arm of government in many ways that he cannot easily foresee. Should his business grow to any size, he will probably want to form a corporation; and to do that he must secure a charter from the government and comply with many laws regulating the organization and management of corporations. If he goes into certain lines of business, such as banking, insurance, railroading, or public utilities of any kind, he will be subject to minute and exacting governmental regulation in nearly every aspect of his business. If he takes up manufacturing or merchandising, the government will regulate certain phases of his business, and its activities will vitally affect many other phases which it does not directly regulate. The government will probably have a great deal to say about his relations with his employees. It may forbid him to employ persons under fourteen or sixteen years of age; it may forbid him to employ women and children more than eight hours a day; it may fix the scale of wages that he must pay to certain of his employees; it may require him to provide rest rooms and sanitary facilities of a prescribed type; it may force him to install many different safety appliances; it may compel him to contribute to a state-administered insurance fund for the benefit of his employees. He will also find that the cost of the things he has to buy and the prices of the things he wishes to sell are deeply influenced by governmental policies as to tariffs, railway rate regulation, and taxation. He will discover, too, that he is almost wholly dependent upon government for protection against the hazards of fire and theft. These few examples illustrate most forcefully the significance of government for one who is engaged in a business career.

Suppose one becomes an ordinary laborer or takes up a skilled trade. There are a number of skilled trades which one may not pursue without a government license; such, for example, in most states are plumbing, stationary engineering, and barbering. The ordinary laborer is directly and indirectly affected by government in numerous ways. His right to join a labor union, his dealings with workers who are not members of the union, and his relations with his employer both individually and as a union member may all be determined by the kind of government to which he is subject. His ability to obtain employment and to a large extent the

wages he is paid are the outcome of his government's economic policies. The same thing is true of the rent he pays for his dwelling and the cost of his food and clothing.

If one is planning to be a farmer, many people will tell him that he is going to lead the most independent existence imaginable. In a sense that may be true, but he should not overlook the fact that the boasted independence of the farmer is being materially undermined. Increasingly he has become dependent upon the industrial centers for clothing, machinery, and fuel, and to a greater extent than ever before for his food. More and more the farmer is obliged to sell his products in markets remote from his immediate community—indeed, in world markets. More and more, therefore, the farmer is dependent upon the complex machinery of national and international trade to place his products in the hands of the consumer. At the same time he has become increasingly dependent upon casual labor and upon the complex conditions that govern the labor market for help in planting and harvesting his crops. In a word, the farmer is daily becoming more tightly bound up in the intricate network of modern life, and therefore is more dependent upon government than ever before. The government regulates railway rates and services, fixes tariffs, controls banking and monetary conditions, and is responsible for many other matters which vitally affect the prosperity and well-being of the farmer. When, as has been the case in recent years, a farmer has to sell a wagonload of hides for less than the price of a pair of shoes and a bushel of wheat for less than the price of a meal at a restaurant, he begins to be aware of his helplessness and begins to demand governmental action to rectify such conditions. The farmer is also dependent upon government for many other things of prime importance to him—for improved highways, for schools, for irrigation and drainage, for protection against epidemic diseases which may decimate his herds of livestock, and for the eradication of pests which may destroy his crops.

Government and Human Welfare

The social well-being of the individual is as important as his physical and material welfare. In all of these matters, such as family life, social environment, education, recreation, and cultivation of higher interests, government plays a large and increasingly important part. The family and all family relationships are subject to governmental regulation that is growing constantly more

comprehensive. The stamping out of crime, poverty, mental deficiency, and other conditions adverse to wholesome community life is coming to be largely a governmental problem. Education is a well-recognized function of government, and embraces not only schools but libraries, museums, and other institutions as well. Recreation is rapidly coming under governmental control, particularly in cities where it is necessary for the government to provide parks, tennis courts, golf courses, playgrounds, and the like; to regulate theaters, dance-halls, cafés, and pool-rooms; and to censor moving pictures and theatrical performances.

Summary

We need not continue longer this survey of the rôle of government in modern life. Surely it is obvious that there is scarcely a moment from the hour of birth until death takes one out of the world that the course of his life is not being shaped and determined by the processes and activities of government. Is it not, therefore, highly important that every person who seeks to know something of the realities of life should understand this all-pervading power which we call government? Could any study be more interesting or more valuable?

What is government? What are its functions and purposes? How does it work? What are the social and economic conditions affecting its operation? What is the part of the individual in government? These are some of the questions which the succeeding chapters of this book will endeavor to answer.

CHAPTER II

WHAT IS GOVERNMENT?

THERE is nothing mysterious about government, and yet it is based upon one of the deepest mysteries of nature. Twenty-four centuries ago Aristotle founded a system of political thought upon the axiom that man is naturally a political animal; and from that time to the present, scholars and scientists have never ceased to reiterate the age-old truth that the ultimate foundation of the social and political institutions of mankind is the gregarious instinct of the human species. As a result of the studies of modern biologists and psychologists we know infinitely more today about the practical consequences of "herd instincts", "group psychology", and "crowd behavior" than did Aristotle; but fundamentally the gregariousness of man remains as much a mystery as it was twenty-four hundred years ago. We do not know why it exists, nor how it has developed. All we know is this: that it is the nature of some animals to prefer a solitary existence apart from others of their own kind, and likewise that it is the nature of other animals to prefer to live in close association with others of their own species. The latter are known as gregarious animals; and we are all aware that they display characteristics and pursue modes of life which sharply differentiate them from all non-gregarious animals.

The one member of the animal kingdom in which this quality of gregariousness is most highly developed is man. So far as we know anything about the origin and history of the human race, it appears that man has always been a highly gregarious being. It is necessary for human beings to live and work together in groups or communities, and has always been necessary, not solely as a means of mutual aid and protection, but also because there is somewhere in the inmost recesses of human nature a force which inextricably entwines the life of each with the life of all. Solitary existence is unnatural to human beings; a hermit is a freak. Men long removed from association with their fellow beings tend to become abnormal, "queer", and sometimes entirely lose their mental balance.

Solitary confinement is one of the most terrible punishments that can be inflicted upon a human being. Not even religious asceticism, which at times among various peoples has impelled thousands to withdraw from all ordinary human intercourse—not even this powerful impulse has been able to extinguish man's ruling passion for a social rather than a solitary existence; for in the end asceticism has usually culminated in the formation of communities of ascetics.

The Basis of Group Life

Human groups, or communities, are of many different kinds, but in certain respects they are all fundamentally similar. People living or acting together as a group are banded together for the purpose of doing things which individually they cannot do, or cannot do as well as a group can do them. Whether it be a group as simple and informal as an athletic team, as ancient and tradition-ridden as the family or the church, or as numerous and omnipotent as the state, if it is an organic human entity, its basic working principle is coöperation—team-work. For any group of human beings to perform its functions and achieve the objects for which it exists, each member must play his part, perform his tasks, and fulfil his obligations as an integral part of the whole. It must be each for all and all for each. But the "each for all" must precede the "all for each", or otherwise the "all for each" will not be possible. This means that the individual must be subordinated to the group; must be kept under the direction and control of the group; and must be prevented from doing anything contrary to the interests of the group.

It is necessary, therefore, in every human group, of whatever character or size, to have some means of keeping the individual in proper subjection to the will of the group, of deciding what shall and shall not be done by the group and the individuals composing it, and of regulating the mutual relations of the individuals who make up the group. In other words, it is necessary for the group to exercise authority over the individual. In groups of purely voluntary character, such as an athletic team, each individual consciously submits to the authority of the group as a condition of membership, and the group in order to make its authority effective designates certain individuals, as the captain or the coach, to exercise authority in its behalf; but in groups like the family, the tribe, or the state, in which membership is almost entirely involun-

tary, the individual is born under the authority of the group and by custom is legally bound to accept whatever arrangements may exist for the exercise of that authority. If we could sufficiently penetrate the mists of antiquity, we might be able to understand how and why it is that the individual has come to sustain such relations to the various groups of which he may be a member; but in approaching the study of government it is enough merely to know that group life and group activity would be utterly impossible if it were not for the unqualified supremacy of the group over its individual members.

The Supremacy of the Group

This fact of group supremacy cannot be too strongly emphasized or too frequently reiterated; for the power and right of the group to control its individual members, and the processes whereby this power is exercised, constitute the essence of the thing we call government. It makes little difference what the original basis of individual subjection to the group may have been—whether it has resulted from a voluntary compact, from immemorial custom, or from coercion—the fact remains that the group, community, or whatever it may be termed, has the power and the right to enforce upon each of its individual members the practices, traditions, customs, rules, and laws of the group. And that is government.

All associations of human beings are characterized by this power and right of the group to impose its will upon its component members. It is as fundamental in human affairs as the law of gravitation in the physical world; for if the group were unable to dominate and control the individual, resorting to force if need be, there could be no group life. And if such were the case, there could be no such thing as human society in any form—no family, no church, no body politic, no civilization; nothing except individual human beings obeying the law of the jungle, which may be stated as "Every one for himself, and the devil take the hindmost". But we know that it is impossible for man to survive as a solitary being, and that there is something in human nature which impels us to group life. Since that is true, and since the ultimate cohesive force in group life is the supremacy of the group—in other words, government—may we not conclude that government is one of the basic ingredients of life, if not part of the very stuff and substance of human nature?

Formal and Informal Government

The dominance of the group is achieved in two ways. With respect to a great many matters the conformance of the individual to the will of the group is brought about through the influence of what certain sociologists have chosen to call "folkways" or "mores". A good illustration of this is furnished by the so-called rules of etiquette which govern our conduct in social life. As is well known, these rules are merely a body of customs and usages which have been favored among the members of a particular group or social class, and which by reason of long acceptance have acquired the sanction of group opinion. Such rules are virtually self-enforcing; for it is one of the distinguishing peculiarities of herd or group psychology that each individual is impelled to identify himself with the herd and to do and think as the great majority of his fellows do and think. People do not obey the rules of etiquette, and similar customs and usages, because of the command of a superior who will mete out punishment in case of disobedience, but because failure to obey means estrangement from the group and the many unhappy and uncomfortable circumstances which that would entail. But they do obey, sometimes even more faithfully than they obey the commands of a definite human superior; and therefore it is not improper to hold that this sort of group control ("social control" is the term used by many sociologists), resulting as it does from the operation of innate psychological factors in group life, is in reality government, although strictly speaking it is a most informal kind of government.

There are many who contend that all government to be truly effective must be based upon well established folkways; and there are some who go so far as to suggest that there might be a state of society in which all necessary social control could be effected through the largely subconscious and automatic conformance of the individual to the prevalent folkways of his group or community. It is easy to imagine that such conditions might obtain in a simple, small, and relatively static social unit; but it is difficult to conceive of such a thing in the modern world.

The common affairs of a group of people numbering not more than a few hundred souls may very readily be so few and so simple as to be comprehended entirely within the scope of such usages and customs as may have received the sanction of group opinion; but when the group comes to include thousands, hundreds of thousands,

and millions of persons, the possibility of effective social control through custom and usage alone is very greatly diminished. When a community comes to number its members in thousands and millions, it must necessarily occupy a very extensive territory; and it is almost certain, furthermore, to be made up of a large number of lesser groups and communities, which, though they may have a common culture, a common language, and many common customs and usages, are sure to be sharply differentiated in many particulars and are likely in some ways to be positively antagonistic. Conditions of this sort not only make against unity and cohesiveness in group life, but also tend to weaken the force of ancient folkways and to preclude the development of newer folkways with anything like universal authority. It is also likely to be true that the affairs of such an immense aggregation of human beings will be so numerous and complex that mere custom and usage cannot possibly cover all of the matters with respect to which group control is necessary. In addition to this, we must remember that in a highly accelerated and constantly changing civilization, such as ours, old customs and usages are being rapidly swept away without being replaced by newer ones which may be said to have attained any degree of permanence and respect. Then, too, in every group, great or small, there are a certain number of individuals who are said to be "anti-social". That is to say, they are not in harmony with the life and spirit of the group; and, owing to inherent defects of mentality or character, or to unfortunate environmental influences, they cannot or do not conform to the accepted norms of conduct. Custom and usage have very slight weight with these anti-social beings.

It is for such reasons that something more than social control through folkways—something in the nature of a formal and systematic process specially adapted to the purpose of subjecting the individual to the group and of regulating the activities of the individuals composing the group—has been necessary in every human community that has risen above primordial savagery. This, for the sake of clear differentiation, we might designate as formal government, consciously established and used for the purpose of bringing the individual under the complete and absolute sway of the group. The distinguishing feature of this type of group control is that certain definite human agencies are set up within the group to decide what shall and shall not be done, both by individuals and the group as a whole; and if the individual disregards the will of the group as expressed through these agencies, he is subject to punishment at

the hands of these or other agencies which exist for that purpose. Group action of this sort is what students of society commonly call political action, or political control; and in the opinion of some authorities only political action should be included within the scope of the term "government".

While it seems evident that the word "government" is sufficiently broad and elastic to embrace all forms of group control, and although it is easy to demonstrate the difficulty at times of distinguishing between political and non-political action, this book is primarily concerned with society as a political organism; and we shall therefore respect the accepted terminology. As used hereafter, therefore, the term "government" is synonymous with group action and group control through distinct political processes and agencies.

Some Concrete Illustrations

Let us now turn from the abstract to the concrete. To illustrate group control through the force of custom and usage—folkways—we cited the rules of etiquette. Suppose now that among a certain group of persons dining-room and drawing-room conduct should come to be considered too important to be left to the chance that each individual would know what was required and would respond to the impulses of group psychology, and that they should accordingly choose a committee to draw up a set of rules which each member must observe or suffer some such penalty as being forbidden to attend social gatherings, paying a fine, or being expelled from the group. They would then have converted non-political into political control, and would have established for themselves a system of government for the control and regulation of that particular phase of their lives.

Another good illustration in point is to be found in the development of sports, such as football and baseball. As originally played in American colleges, football was a sort of adaptation of the English game of rugby, without any definite rules or fixed style of play. Each college followed the various traditions and customs as best it could in its own way. This proved very unsatisfactory, and eventually a group of leading colleges joined in choosing a committee to formulate rules for the conduct of the game. In time this rules committee came to represent the entire collegiate life of the country; and the rules which it prescribes ore today faithfully observed all over the land. In addition to this, groups of colleges in different parts of the country have formed organizations called

"conferences", whose purpose is to draw up and enforce rules as to the eligibility of players and kindred matters. Any college which violates the rules of the conference or refuses to abide by the rules as laid down by the national rules committee may be subjected to severe penalties and may be entirely eliminated from competition. Thus has political action—government—replaced non-political action in the football world. Much the same thing has occurred in the world of baseball, where the formation of leagues of clubs under a national commission, and latterly under a supreme dictator, Judge Landis, has called forth a very comprehensive system of government to control the affairs of a sport which formerly was regulated almost entirely by custom and usage.

Government in the Modern World

Now let us turn our attention for a moment to the world about us. Throughout the entire world we see people living together in groups or communities. The first group to attract our attention is what might be called the national group. The United States comprises a national group of more than 105,000,000 people; to the north is another group of 8,000,000 people, which we call the Dominion of Canada; to the south is yet another group numbering about 14,000,000 persons, which we call the Republic of Mexico; across the Atlantic Ocean we see a national group of 47,000,000 people, which we call the United Kingdom of Great Britain; on the continent of Europe we find the Republic of France with 39,000,000 inhabitants, the German Empire with 59,000,000, the Russian Soviet Republic with 130,000,000, and many smaller groups; in Asia we observe the Republic of China with 300,000,000 people, and the Japanese Empire with 56,000,000. These perhaps are the most conspicuous national groups in the world, though dozens of others might be mentioned.

And what is a national group? That is a most difficult question to answer. Upon closer examination we observe that each of these great national groups is made up of an almost limitless number of lesser groups. There are groups which are essentially political subdivisions, as states, provinces, counties, communes, and cities; there are groups which are differentiated along religious lines, as Catholic, Protestant, and Jewish; there are groups composed of different races, such as the English, Irish, and Scots in the British Isles, the Basques, Bretons, and Normans in France, or the multifarious racial conglomeration in the United States; there are groups whose differences

are primarily economic, such as labor unions and industrial corporations; there are groups which differ in culture, language, customs, ideals, ambitions, and, in short, with respect to almost everything which may serve to differentiate one people from another. And yet all of these innumerably diverse groups of people, with their clashing and conflicting interests, their dissimilar folkways, and their antagonistic aims, are bound together under one national government; and through this government and its various subdivisions are common enterprises undertaken, common needs supplied, common policies determined, clashing interests adjusted, divergent aims reconciled, and individual activities regulated and controlled.

In such a state of society strong and efficient government is a paramount necessity. The authority of government must be far-reaching, the powers of government must be almost unlimited, and the functions of government well-nigh all inclusive; otherwise the social fabric cannot be maintained and the progress of civilization cannot be continued. This truth will become more obvious, and the profoundly important rôle of government in the modern world will become more apparent, as we consider more fully the evolution of government and its position in the social and economic life of man.

CHAPTER III

THE BEGINNINGS OF GOVERNMENT

Any one desiring to start a furious war of words among professors and savants need only raise the question of the origin of government. The truth is that very little is known about the beginnings of political institutions; but there are a great many theories on the subject, each of which is warmly defended by its proponents. Some of these theories are entirely conjectural and owe their existence solely to the romantic imaginings of their inventors; others may be called pseudo-scientific, because they make a certain use of scientific data to bolster up absurdly unscientific conclusions; and those which are most truly scientific are as a rule least satisfying to the type of mind which demands a logically complete explanation of the phenomenon of government, because they make no attempt to go farther than is warranted by the fragmentary and inadequate data at our disposal.

Points of View in the Study of Political Origins

The conclusions reached by the student of political origins depend in large part upon the point of view with which the study is undertaken. Many persons have taken up the subject merely as an interesting intellectual excursion and have therefore been content to rest their conclusions upon speculative bases altogether; others have entered upon it in order to round out a particular system of philosophical ideas to which they were devoted, and have consequently been disposed to reject everything that might be inconsistent with their preconceived assumptions; others have advanced certain hypotheses as to the origin of government in order to prove the righteousness or unrighteousness of some existing scheme of government which they were attacking or defending; and a few—far too few—intrepid souls, actuated only by scientific curiosity, have explored the twilight realm of political beginnings merely to discover facts and report them fully and accurately regardless of their possible meaning or effect. It is obvious, therefore, that one

should not give credence to any set of political theories without knowing what is behind them.

The Divine Origin Theory

One of the oldest and most persistent dogmas as to the origin of political institutions is that government has been instituted among men by divine authority, either by direct revelation or indirectly through certain persons who are to be regarded as the earthly representatives of the Deity. As far back as human history goes we find rulers claiming to be directly descended from the gods and duly appointed to be the earthly vicegerents of the supernal will. Such claims were advanced by the rulers of the ancient empires of Egypt, Chaldea, Babylonia, Assyria, and Persia, by Alexander the Great and his successors, by Cæsar Augustus and succeeding Roman emperors, and by the emperors of China and Japan. And when there have been no pretensions of genealogical connection with the gods, there have almost invariably been claims of the direct revelation of divine will in a peculiar way, as in the case of the theocratic state of the Hebrews, the special sanction of certain gods claimed by rulers in many of the Greek city states and in the early Roman republic, and the political prerogatives claimed by Mohammed and his successors.

When pretensions of divine descent and divine revelation could no longer be maintained, more ingenious and subtle arguments were employed to support the doctrine of divine right. Recourse was had to the Scriptures and other sacred writings to prove that all human institutions are ordained from on high, and that the existence of government, law, and order in the world is a part of God's plan. From this premise it was possible to deduce the conclusion that the authority of kings was derived from God and that disobedience to the king was disobedience to God as well. This contention has been put forward at some time by rulers in all European countries—by the Stuarts in England, the Bourbons in France, the Hapsburgs in Austria, the Romanoffs in Russia, and the Hohenzollerns in Germany. Although the logical foundations of this divine origin theory were thoroughly demolished two centuries ago, it has shown a curious vitality; and it was not until 1918 that the last exponent of this ancient dogma found it expedient to take an involuntary vacation, and retired to the more congenial occupation of sawing wood and cultivating flowers on his estate in Holland.

It is interesting also to note a Twentieth-Century recrudescence of the divine origin theory in the United States. The idea of a God-ordained constitution, too sacred to criticise and too perfect to require change, has been assiduously cultivated in this country for a number of years. How far it will develop, no one can pretend to say; but if it runs a course similar to that of the divine origin theory in its other manifestations, one may safely predict a tempestuous future in American politics.

It seems hardly necessary to say that the divine origin theory is utterly without scientific foundation and has been demonstrated over and over again to be entirely untenable. Indeed, it has never been put forward for any purpose save to justify an attitude of "Whatever is, is right" toward political institutions.

The Compact Theory

It might be said that the compact or contract theory of the origin of government grew out of the long struggle against despotic government predicated upon the doctrine of divine right. The essence of the compact theory is that men originally existed in a state of nature free from all governmental authority and restraint, and that in order to enjoy the benefits of community life they voluntarily abandoned their natural state of freedom and entered into a solemn compact or contract whereby government was instituted. This theory was first expounded in 1594 by Richard Hooker, a clergyman of the Church of England, who used it to defend the established church against the attacks of its opponents. It was then taken up by Thomas Hobbes, the great philosopher who championed the monarchy during the Puritan Revolution in England, and also became the basis of the political philosophy of John Locke, the great vindicator of the Puritan Revolution. Somewhat later it was taken up by Rousseau, the great French philosopher, whose brilliant book *Le contrat social* gave the doctrine enormous popularity and supplied the philosophic groundwork of the French Revolution. The leaders of the American Revolution were ardent disciples of Locke and Rousseau and accepted the compact doctrine as they accepted the truths of Holy Writ. In the Declaration of Independence there is an almost perfect statement of the compact theory in the clause which reads, "That to secure these rights [life, liberty, and pursuit of happiness] governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends,

it is the right of the people to alter or abolish it, and to institute a new government, laying its foundations on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness". Again in the preamble of the Constitution the compact doctrine is stated as a direct declaration of popular will: "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America".

Historical research has completely undermined the compact theory as a scientific explanation of the origin of government. It has been conclusively demonstrated that no such thing as a free state of nature has ever existed, and that few, if any, governments have ever been established on the basis of an absolutely voluntary contract on the part of the governed. It is possible even to raise many doubts as to the contractual character of the American system of government, as was strikingly demonstrated by the Civil War. Nevertheless it is probably true that the compact doctrine has had a more profound influence upon the course of political development than any other idea which has ever taken root in the human mind. Even though government did not originate in a social contract, the fact that people came to believe that it did and to believe further that no government had a right to exist without the consent of the governed, has resulted in the overthrow of autocracy and the establishment of democratic government in nearly every quarter of the world. Scientifically discredited though it be, the compact doctrine cannot be relegated to the limbo of forgotten theories; it still exerts a tremendous influence throughout the world. Was it not the right of self-determination—the right of each people to have a government of its own choice—that millions of people held to be the paramount issue of the recent World War? And did not the United States avowedly enter the war in order "to make the world safe for democracy"?

The Kinship Theory

To the lay mind one of the most plausible of the more strictly scientific theories of the origin of government is that which traces the genesis of modern political institutions back to the primitive family. According to this theory the original human group was

the family, consisting of a man and his wife and children. The will of the father was the law of the family; and even though the children might marry and have children of their own, they remained under the authority of their father as long as he lived. Thus was brought together a large body of persons who had common interests and were united through descent from a common ancestor. It was probable that this group would hold together even after the death of the father, and, as the number increased, that it would be necessary to set up some sort of government for the management of common affairs and the adjustment of internal relations. In some such fashion it was supposed that the family expanded into the clan, the clan into the tribe, and the tribe into the nation.

It was soon shown, however, that this patriarchal family, in which authority was exercised by and descent traced through the father, had never existed among many peoples, and that among certain primitive races kinship and descent are traced through the mother rather than through the father. These discoveries led to a revision of the kinship theory, and one group of scholars came to believe that the first germs of modern social and political organization were to be found in the matriarchal family, i. e., the family centering about and tracing its descent through the mother. Eventually, however, the matriarchal and patriarchal ideas were woven together as successive steps in an elaborate evolutionary scheme which Dr. Harry E. Barnes has summarized as follows:

> Applying these methods and assumptions to the study of early society, these writers arrived at a series of definite conclusions. The monogamous family shows a slow but distinct development from original promiscuity, and the family of any type is a late product developing within the older kinship or gentile organization of society. In the history of gentile society certain definite and successive stages can be isolated and their sequence correlated with the development of material culture. The first type of extensive human grouping was found in the endogamous horde, where there was neither fixed family nor other wider relations. This stage was followed by the appearance of definite kinship or gentile society associated with the exogamous clan, which was inseparably connected with a totemic complex. The earliest form of gentile society was the maternal clan, which was in time invariably succeeded by the paternal gens, this transformation in the basis of relationships being definitely correlated with progressive advances in material culture. The paternal gens was gradually solidified into a patriarchal organization of society, which, through the development of property and the infiltration of foreigners from economic attraction, was in time superseded, through the abolition of kinship principles, by the establishment of the territorial state and civil society.[1]

[1] Barnes, *Sociology and Political Theory*, p. 48.

This doctrine of the orderly evolution of political society from primitive groups based upon kinship held the stage for many years, and in fact is still upheld by scholars who have not familiarized themselves with the progress of the newer sciences of anthropology and ethnology. But as Dr. Barnes points out, recent developments in these departments of knowledge have almost entirely shattered the kinship theory. To quote again:

> The application of this more scientific method to the study of primitive society has been nothing short of revolutionary. The universality of gentile society cannot be proved; many groups have developed to a relatively high stage of culture without any system of relationship wider than the family. Where gentile society exists there is no general tendency for relationships to change from a maternal to a paternal basis; in fact, it may be doubted if there is one well-authenticated example of an independent change in kinship from maternal to paternal in the whole range of assured data bearing upon primitive society. Further, there is no evidence that maternal kinship is correlated with lower material culture or paternal kinship with more advanced culture. Finally, totemism has been entirely dissociated from exogamy. It is evident that the whole fabric of the scheme of social evolution provided by the evolutionary group has perished. . . .[2]

About all that remains of the kinship doctrine, then, is the opinion expressed by certain authorities [3] that whatever may have been the actual historic development, the final organization of society as it approached political form was based upon the patriarchal family, and that a feeling and a spirit of kinship still pervades the national state.

The Force Theory

The idea that the ultimate basis of all political institutions is force, is by no means new; but it is a doctrine that for various reasons has been very repugnant to the human mind. It could not be expected that minds enamored of the idea of democracy and under the spell of the contract doctrine or the equally attractive theory of kinship with its corollary of universal brotherhood, would take kindly to the force theory. Nor could it be imagined that autocratic rulers would in the interest of historical accuracy forsake the flattering theory of divine sanction and endanger their security by the frank admission that their authority rested upon nothing else than force.

[2] Barnes, op. cit. pp. 50–51.
[3] Cf. Gettell, *Introduction to Political Science,* pp. 42–43.

In its original form the force theory was hardly more than a dogmatic assertion that organized society and likewise political institutions owe their origin to the strong man, who by sheer physical violence subjected others to his will and formed a war band and a community. By successive conquests, it was assumed, such war bands grew until they included a sufficient number of persons and controlled enough territory to constitute a state. The modern version of the force theory takes no particular account of the way in which the primary human groupings may have been effected. There may have been many factors in the formation of the original social units, as for example blood relationship, geographical contiguity, religious beliefs, occupational conditions, etc.; but it is insisted that the chief means by which these primordial groups have been consolidated into larger groups having definite political functions has been nothing else than military conquest. To use the language of Dr. Charles A. Beard:[4] "The state originates when a war band conquers the people of a considerable geographic area, welds them together, and settles down upon them as a ruling class. It did not originate in contract or family, but originated in conquest". This is the doctrine, according to Dr. Barnes, which has the approval of the more recent sociological and anthropological investigators.

Gradually, however, the doctrine has gained ground that the territorial state was primarily the product of forcible subjugation through long continued warfare among primitive groups. To-day this may be said to be *the* sociological theory of political origins and development. * * * Briefly stated, this theory rests upon a doctrine of group constitution of society, based on the principle of *synegism* or "the phenomenon which consists in the fact that invariably in associated modes of life, definite groups of men, feeling themselves closely bound together by common interests, endeavor to function as a single element in the struggle for domination". From the earliest days the "process of history" has consisted chiefly in the struggle between social groups for the advancement of their economic interests. The conquest of one group by another led to the subjection of the conquered and the ascendancy of the conquerors, who gradually but continuously increased the territorial scope of their authority. In order to gain internal strength and unity, however, the rulers of expanding groups were compelled to grant concessions to the conquered, and with this the process of cultural assimilation began, physical amalgamation was gradually achieved, and the national state was produced.[5]

Modern Anthropological Theories

The present drift of scientific opinion as to the origin of political

[4] Lecture to students of Training School for Public Service, March 6, 1918.
[5] Barnes, op. cit., p. 53.

institutions is best illustrated perhaps by the conclusions of anthropologists of the new school, who have done a vast amount of research work among primitive peoples. These are well stated by A. A. Goldenweiser in a chapter included in the volume recently published as a memorial to the late Professor William A. Dunning of Columbia University.

To summarize: political organization and social organization, in the narrower sense, represent two polar aspects of social life. Both are omnipresent in human society. If a social aggregate is conceived as comprising a diversity within a unity, the social organization emphasizes the diversity, the political organization the unity. Social consciousness proper registers a differentiating tendency, political consciousness, an integrating one.

In the course of social development, the differentiating tendency leads to the formation of social units within the social aggregate, social units based on similarity of kind with reference to locality, blood, age, generation, sex, birth, rank, occupation, possession. The functions of these social units are such as to render them homologous, that is, the functions while generically similar in all units, are specifically different for each unit. The generic similarity of the functions keeps ever alive the sense of ultimate unity. This is the primal political fact.

The sense of political unity in its simplest form attaches itself to a single tribe. Under normal conditions of peaceful activity, it may become very inconspicuous, leading an almost surreptitious existence in the use of a common language, common customs, common territory, but also in an at least potential sense of readiness for defense against aggression by foreign tribes and of readiness for aggression against such tribes. It is along this line that further political development takes its course.

The main factors in this development, in addition to war, are: the strengthening of the local principle, in particular, territorial expansion, the differentiation of social classes, the rise of property and with it of economic distinctions, the emergence and solidification of the principle of inheritance of office and privilege, in particular of the privilege to rule, the growth of the prestige and power of leaders or of a leader and the emergence of administrative officials, that is, of a bureaucracy.

These factors enjoy a considerable degree of independence. They do not of necessity work together. * * *[6]

Summary

We may now attempt to formulate some general conclusions as to the origin of government. The divine right theory and the compact theory we may at once reject as being purely fictitious. The kinship theory contains certain elements of truth, and perhaps does partially, if not wholly, explain the origin and development of some human communities; but in the opinion of modern scholars it is wholly inadequate to explain the transmutation of many small,

[6] Merriam, Barnes, and others, *Political Theories: Recent Times*, p. 454.

diverse, and detached groups into a consolidated political entity called the state. The force theory is supported by abundant evidence, historic and prehistoric, tending to show that nearly every government of any consequence has owed its existence largely to the sword. It is probable, however, that the force doctrine overemphasizes military might and does not give due weight to other state-building forces, geographic, economic, religious, and otherwise.

To obtain a more accurate conception of the rise of political institutions, it is necessary to remember that the subject naturally resolves itself into two divisions: (1) the rise of primitive political institutions, and (2) the rise of the state. With regard to the origin of primitive political institutions much has been learned during the past two decades. The persistent belief that human society had reached rather an advanced stage of development before political organization appeared, has been shown to be entirely unfounded. "Political organization must be regarded as no less ancient than social organization", is the verdict of contemporary anthropologists. The present view is that government and society have grown up together, and, as some have expressed it, that the institution of government is itself a folkway which serves as a bond to integrate and solidify the social aggregate. Just how this bond has been established in all primitive groups it is not possible to say. In all probability a great many different factors have entered into the process.

Mr. H. G. Wells in his justly famous *Outline of History* has given us a very vivid picture of the life of the primitive family group as it may have been some twenty or thirty thousand years ago. The Old Man, the only adult male in the group, was the father and master of the group. By fear of the Old Man, by a feeling of kinship, by the fact of a common habitation or squatting-place, by the need of coöperative effort in the search for food, by force of habit, and so on, the little group was held together. This type of family organization does not seem to have been universal, and even where it has existed it appears to have been preceded by a looser and more casual form of social relationship. It does, however, give some conception of the primitive, not to say bestial, character of the type of social life from which modern political institutions have been evolved. Similar combinations of circumstances have no doubt entered into the formation of those larger primitive groups which have been variously designated as the horde, the clan, the gens, the tribe, and so forth, and which are deemed to have been the precursors of the territorial state. A feeling of unity

would naturally exist among the denizens of a certain valley or water-course. If they were related by blood, this feeling would be intensified; if they had similar religious beliefs, it would be further accentuated; if they were obliged to unite in common defense of their lands and possessions, it would become still stronger; if they were accustomed to pursue common modes of life in hunting and fishing, the bond of unity would be strengthened even more; and if they were held in subjection to a common war chief, the feeling of unity would tend to become permanent.

But somewhere along the road from savagery to civilization primitive political organization, such as it may have been, has been transformed into state organization on a definite territorial basis. It seems to be the opinion of most scholars that the final synthetic factor in this process of transmutation has in almost every case been military conquest; but that should not blind us to other factors which have also contributed to the development of statehood. We cannot afford to ignore the influence of geographical conditions, race consciousness, religion, and economic interest. The distinguishing features of state organization in contrast with primitive political organization are that under state organization there is a large, and often heterogeneous, aggregation of people settled upon a definite territory of considerable extent which they regard as their own and over which there is established a powerful government exercising very extensive, and sometimes well-nigh absolute, authority over all persons and things within the given territory. This authority is clearly differentiated from custom, religion, and all other processes of group control; is exercised by persons recognized as having special governmental prerogatives; and may in the last analysis override and supersede all other forms of human authority. The first states to emerge from the shadows of barbarism were the ancient empires of Egypt, Assyria, Chaldea, Babylonia, and Persia. Then came the Greek city states, and following them the world empire of Alexander the Great. Upon the disintegration of the Alexandrian empire, Rome gradually rose to a position of world domination which she held for many centuries. The breakdown of the Roman Empire was followed by a chaotic and transitional phase characterized by the sway of feudalism. From this emerged the modern national state, at first in the form of absolute autocracy but since transformed to a democratic basis. A study of the civilizations of China, Japan, and India discloses not wholly dissimilar lines of development in the process of state building in the eastern world.

CHAPTER IV

SOCIETY AND GOVERNMENT

The difficulties of students of social questions are rendered unnecessarily formidable by the lack of standardized and exact terminology. From the modern point of view the proper point of embarkation for the study of government is a consideration of the fundamental nature of society itself; and yet we have no satisfactory or generally accepted definition of society. Between the scholar who would define society as including "every willed relationship of man to man" [1] and the one who would say that the world is made up of a number of societies, each being merely an aggregation of human beings characterized by certain social phenomena, there is room for much misunderstanding and difference of opinion. It is necessary, therefore, that we should undertake to say at the outset just what we mean by the term "society".

With respect to one fact all authorities are in agreement; namely, that the life of every individual is inextricably interwoven with the life of one or more groups of human beings to which he belongs. "No man liveth unto himself", but is a composite part—an atom, if you will—of an organic whole which is something quite different from the sum total of the individuals entering into it. Eleven boys kicking a football about the playground are just eleven boys; but eleven boys organized, drilled, and coached to pit themselves against eleven from a rival school, are more than just eleven boys; they are a team—an organic group with a distinctive unity of thought and action.

Such groups are the basic elements of society. Every person is a member of one or several groups of this kind, through which he seeks self-realization and the satisfaction of the interests, ambitions, and purposes of his life. We have but to look about us and to analyze our own contacts with life to discover an almost indefinite number of such groups. Every person is a member of a family; many belong to a church or religious group of some sort; those

[1] Cf. MacIver, *The Community: A Sociological Study*, p. 22 ff.

who are in school belong not only to their class organization but also to various special groups within the class and school; workingmen are quite commonly members of labor unions; business men are members of firms, partnerships, corporations, trade associations, employers' organizations, chambers of commerce, and the like; many people are members of fraternal orders and social clubs; farmers are members of the Grange or other farm organizations; persons athletically inclined join athletic clubs and associations of various kinds; persons interested in charity form charitable organizations, and so on without end. Nor do these few examples take account of the large number of less formal and less definitely organized groups that are to be found everywhere, such as the "four hundred" who constitute the "best" society, the working class, the wealthy class, the middle class, etc.

Despite the amazing diversity and variety of the groups which we find about us and of which we are part, we are ever conscious of a larger unity. These many dissimilar and often conflicting groups we feel to be but the warp and woof of a vast and complex social fabric, which, despite its variegated pattern, is essentially a seamless web. To this larger organism—this group of groups, as it were—we give the name "society". It is possible of course to imagine a society sufficiently comprehensive to embrace the whole world and every interest and activity of mankind without regard to geographic or political boundaries. It is equally possible to conceive of a society including all races and peoples of a particular type of civilization or culture. But the more practical students of social phenomena have observed such close correlation between the functioning of society and the process of government, that one who is interested in the concrete rather than the abstract phases of the social process is virtually driven to consider each major political division of mankind as a separate society; to think of American society as one thing, of British society as another, of French society as yet another, and so on. The reasons for this will appear more clearly as we proceed with our examination of the structure and functioning of society.

The Structure of Society

We have already observed that society is composed of a multitude of social groups, each of which is made up of individuals who are like-minded in certain respects and have identical or similar interests. Through the groups to which he belongs each individual

must strive for the satisfaction of all his interests, both material and spiritual. Some social groups are concerned primarily with the struggle for material necessities, such as food, clothing, and shelter; others are concerned mainly with the satisfaction of the sex instinct, in the broader sense; others are devoted to religious objects; others are given over to intellectual interests; others are interested in occupational or professional matters, and so on, and so on. These groups are not mutually exclusive; one individual may belong to several different groups. Nevertheless it is a fact that there is not only great dissimilarity among the component groups of the social fabric but often the fiercest sort of antagonism and conflict. This is true both of dissimilar groups and of separate groups having similar objects. So we may say that society is a web of interest-groups bearing to one another almost every conceivable relation from close alliance to bitter hostility.

Now the fact that we have not noted hitherto is that in every sort of society, except possibly the most primitive (modern anthropologists probably would not grant even that exception), there are groups devoted largely, if not exclusively, to governmental purposes, and that these governmental groups bear a very peculiar relation to all other groups. Not only do governmental groups cut through all other group lines, but they also have a compulsive power and authority that other groups do not. To understand how and why this is so, it is necessary to delve still further into the fundamental realities of the social process.

The Problem of Social Control

We have seen that man is essentially a gregarious, or group-living, animal; that the group and the individual are by nature one and inseparable. Yet there has been implanted in human nature something that makes for eternal warfare between the individual and the group. So potent is the ego of the individual that he constantly strives to assert his individual will and to gratify his individual passions and desires without regard to the interests of the group. This creates a necessity for group control of the individual in order to protect the group against disintegration and destruction. In most cases the social instinct is indubitably stronger than the individual instinct, and therefore in the great majority of social groups the process of social control rests mainly upon psychological

bases. The penalty for disregarding the folkways, i. e. the established customs, of the church, the social club, the labor union, and the like, is nothing more than the disapprobation of the group followed possibly by expulsion from the group.

But there have always been circumstances under which control of this sort has been or has seemed to be entirely inadequate; and therefore there has always been a tendency for certain groups at least to seek means of controlling the individual by the application of force—in other words, to establish some sort of process of government. This tendency has been observed among very primitive peoples; evidences of it are to be seen in strictly non-governmental groups of the present time, as in the spanking of recalcitrant members of college fraternities and the use of violence to keep members of labor unions in due subordination; and it grows visibly stronger as the social fabric becomes more highly differentiated and complex. Social control through governmental or political action is, therefore, just as natural as social control through folkways or mores. We are no more able to explain the origin of this form of social control than we are able to explain the origin of control through social psychology: we must simply accept the two forms of social control as facts. What we do know, however, is that far back in the early dawn of human development political control became an established mode of group action, and that as man has moved upward in the scale of civilization group organization for the exercise of political control has taken definite form and has come to be a most vital part of the social process.

When we consider society as a whole, instead of the single group, we find circumstances making even more strongly for political control. Each group naturally strives to perform its functions and achieve its ends without regard to the divergent and possibly conflicting interests and activities of other groups. Considering society as a network of interest-groups, it is plainly evident that, without some process of coördinating, adjusting, and composing group differences and of regulating group activities, the social process would tend to degenerate into a continuous state of warfare among independent and competing groups. It cannot be without significance, then, that the development of every society of any consequence has been characterized by the rise of political groups sufficiently large and powerful to exercise coercive authority, not merely over all individuals, but over all component groups of the social fabric as well.

The Problem of Social Coöperation

Keeping the individual in subordination to the group and preventing the disintegration of society through internal conflicts among its constituent groups, is only one reason why government is a necessary element of the social process. The need for government is equally great in connection with group undertakings; that is to say, the various activities and projects that are carried on by the group for the benefit of its members both individually and collectively. The accomplishment of such undertakings requires most effective team-work and coöperation on the part of the members of the group. This may come through voluntary coöperation; it may be effected through the psychological force of group opinion; but in many instances it can only be brought about through the coercive power of government. So, too, in the larger social aggregate which we call society, it would often be impossible, without resort to governmental compulsion, to reconcile the conflicting and overlapping activities of different groups and to achieve concerted action in matters of moment to society as a whole. But we should note that government serves not only as a means of bringing about social cooperation by force, if need be, but also as an agency for the administration and management of common affairs. With the ever increasing complexity of society and the rapidly multiplying number of things which can no longer be done by the individual alone or by small groups of individuals, this service function of government has come to be of incalculable importance. Government today is less the policeman and more the servant than ever before in history.

The Place of Government in Society

We are now in position to consider the place of government in society. We cannot say that governmental groups encompass all other social units, and that non-governmental groups should be regarded as merely subordinate elements of political society; but we can say that the groups through which governmental power is exercised occupy a unique position in society, in that they have the right and the power to dominate and control both their individual members and all other groups coming within the scope of their territorial jurisdiction or legal authority. Such, indeed, is their characteristic function; and it may be presumed that they have been called into existence because this function is absolutely indispen-

sable to the development and maintenance of the social system. In the first place, as MacIver puts it, government "preserves and upholds through its organization the very existence of society". That is equivalent to saying that without government there could be no such thing as human society; that all other forms of group life and group action are made possible by government. The reason for this becomes quickly apparent when we recall that, owing to the constant pressure of the individual against social restraint and to the interminable conflict among social groups, there is engendered in society a tremendous centrifugal force which would completely rend the texture of the social fabric were it not for the countervailing centripetal force supplied by government. Furthermore, and in the second place, the governmental organization of society constitutes the most complete, the most powerful, and the most highly centralized organization that society has been able to build up; and therefore it is naturally the most convenient and available organ of society for the regulation of common concerns and the promotion of general welfare. To this end government is employed to supplement other types of group activity; to regulate and coördinate the activities of non-governmental groups; and to assume entire responsibility for many activities which it is believed can be carried on more satisfactorily by government than by other social groups and agencies.

In summing up, then, we may say that government is the synthesizer as well as the chief buttress of the social order, and that it also functions as a strong central agency for social control and for the regulation and management of common affairs.

The State

When we find society definitely organized for governmental purposes, with distinctly differentiated institutions for exercising the united power of the community within a given area, we have what learned doctors and professors have chosen to call the state. That, however, is a term which should be employed with great circumspection; for it is easily susceptible of misunderstanding and abuse. We are not here concerned with academic abstractions and juristic fictions; we need not even pause to note the mystic and more or less imaginary attributes, such as sovereignty, continuity, personality, etc., which certain minds have accorded to the state. From a juristic standpoint such matters may be important; but for us who are interested in concrete realities it is sufficient to say that the

state is nothing more than a system of governmental organization and procedure which has become established among the inhabitants of a fixed and definite portion of the earth's surface and through which they act as a corporate entity in utilizing force for the accomplishment of social ends. By adhering to such a common-sense definition of the state, we shall avoid much of the confusion and controversy which have attended the study of political society. It is not even important that we should observe the customary distinction between the state as the legal embodiment of the community and government as the functional arm of the state.

CHAPTER V

GOVERNMENT AND ECONOMIC LIFE

Reduced to its lowest terms, human life is a struggle for the means of subsistence. We must eat, we must be clad, and we must be sheltered from the fury of the elements. These are the most fundamental needs of humanity, and life resolves itself into a ceaseless struggle for their satisfaction. Nor does the struggle end there; we all want more of the material satisfactions of life than just enough to eat and wear and shelter our heads. We want a multitude of things that are not absolutely necessary to sustain life; we want comforts, conveniences, luxuries, and many other things to gratify mere tastes, appetites, and passions; we want wealth and all that it brings in the way of leisure and power. The activities in which we engage in order to satisfy these material needs and wants are called economic activities, and the science which deals with this phase of life is known as economics.

The Economic Struggle

The economic life of mankind consists of a never-ending struggle on the part of individuals and groups of individuals to obtain the means of economic satisfaction. In carrying on his economic activities each individual must function as a member of one or more groups which are held together wholly or largely by economic considerations; and yet within the group he must serve his own self-interest and to that extent turn his hand against every other member of the group. It is easy to see how this paradoxical situation could arise in primitive society. For primitive man the economic struggle was a much more terrible thing than it is for us today. He had to contend with calamities of nature, with wild beasts, and with human foes. Adversity and imminent destruction were ever at his heel. Physically one of the most helpless of all creatures, he had to learn the great lesson of coöperation in order to survive. It was quite natural, however, that within the groups and bands which were formed for mutual assistance and defense each indi-

vidual should strive for the fullest possible satisfaction of his own economic needs and wants. Although the welfare of the group was the paramount thing, within the group individual interest came to be arrayed against collective interest; and, as many different groups were welded together to form the larger aggregate called society, group interest came to be arrayed against the larger collective interest of society as a whole.

In contemporary society we find the same ceaseless struggle among individuals and among groups, and the same endless effort to reconcile individual interest with group interest and group interest with broad social interest. There are scholars, indeed, who hold that the whole social and political system of modern life is but an outgrowth of the economic struggle, and that nearly all social and political phenomena may be explained by economic facts. However that may be, we do know that modern society is a tissue of groups which in many, if not in all, cases have a common economic interest as one of their principal cohesive elements. This is true of the family, of commercial and industrial organizations of every sort, of labor unions, and also of those less definite groups, such as the working class, the agricultural class, the middle class, and the capitalist class, about which we hear so much nowadays.

The Fundamental Operations of Economic Life

In order to provide goods or services for the satisfaction of economic needs and wants many complex activities are necessary; but these can all be classified under two heads, which economists call production and distribution. Production includes all of those activities whereby man appropriates the resources of nature and converts them into forms capable of satisfying economic needs and wants. Distribution includes all of those activities whereby the things required for the satisfaction of economic needs and wants are transferred from producer to consumer. In modern economic life production includes such activities as tilling the soil, raising livestock, fishing, mining, lumbering, manufacturing, and rendering certain kinds of professional service; while distribution includes such activities as transportation, ocean shipping, merchandising, finance, and advertising.

Economists usually say there are three factors in production—land (or natural resources generally), labor, and capital. We need not stop here to inquire into the economic significance of those dif-

ferent elements in production; but what we do need to realize is that production is a competitive process which may, and often does, result in a fierce struggle between different individuals and groups of individuals to gain control of one or more of the essential factors in production or to use one of the factors in order to get control of the other two. Thus we very often find interests controlling land arrayed against those controlling labor or capital, interests controlling labor arrayed against those controlling land or capital, and interests controlling capital arrayed against those controlling labor or land. Each seeks predominance over the others; each wants the lion's share. And when the struggle is not between individuals and groups controlling different factors in production, it is between different individuals and groups controlling in a measure all three factors. Such has been the story of economic life since the dawn of history and will be as long as the competitive system endures. So furious is the struggle that, unless mitigated by some form of social control, it tends either toward a deadlock which seriously curtails production or toward the elimination of competition by reason of the triumph of one of the contending parties. Furthermore, the rewards of the struggle do not necessarily go to those who work hardest and are most efficient. Very often they go to those who, fairly or unfairly, have obtained certain special advantages, such as monopolistic control of indispensable raw materials, landsites, or something of that sort, and who may therefore exact from society an utterly extortionate compensation for their services. Likewise those who scruple not to trick, rob, and despoil the more honest members of society may, unless restrained, thrive without contributing anything to the process of production.

It is much the same with regard to distribution. The vital factors in distribution are transportation, marketing (including all kinds of merchandising and selling), and finance (particularly money and credit). These are the focal points of the economic struggle in connection with the process of distribution. Competing individuals and groups of individuals are engaged in continuous warfare over channels and facilities of transportation, over markets and marketing arrangements, and over financial operations. The results are quite the same as in production. In many cases the struggle produces conditions which obstruct or entirely prevent adequate distribution; in other cases the result is a monopoly which levies an unreasonably heavy toll upon society; and in other cases unscrupulous individuals and groups take advantage of the various turns in the process of

distribution to prey upon society through robbery, theft, and deceit.

Governmental Control of Economic Life

At various times in history a cry has been raised against all forms of governmental interference with the economic affairs of mankind. It is contended that governmental interference with the free operation of economic laws is a bad thing, and that under a state of free competition production and distribution would be automatically regulated through the operation of natural economic laws. We shall deal more fully with that contention at a later point; at this juncture we wish merely to point out that it does not represent the matured judgment of society.

Society demands governmental interference in economic life, and in the state it has built up a governmental institution which is now and has always been largely concerned with the regulation and control of economic life. Society requires governmental interference in economic life in order to prevent disorder and violence among competing individuals and groups, and to maintain the security and stability of the social system. The underlying basis of economic life in the present social order is the institution of private property; and this institution could not be maintained for a day without the sanction and support of government. Without government no one would have a right to own anything except such as he could hold by his own physical prowess. All rights in property and in the use of property are created and protected by government; and these rights constitute the foundation of the system of production and distribution in every country of the world to-day, except Russia.

Society depends upon the power of government not only to establish and maintain the institution of private property, but also to regulate and control it so as to prevent and correct abuses. That is why we have an ever increasing amount of governmental interference with the various phases of production and distribution. Rightly or wrongly, society has come to feel that unrestricted freedom in the enjoyment and use of private property is the cause of many grave abuses; and to curb these abuses society has turned to its most powerful organ, the state. As a consequence there are very few forms of economic activity in modern society that are not to a greater or less degree regulated and controlled by government. The Bolsheviki in Russia considered private property to be incurably evil and the cause of most of the woes of mankind, and therefore upon gaining control of the government in 1917 they

used the power of the state to abolish private property altogether. The success of the Russian experiment has not been such as to warrant its extension to other countries, but this failure is not going to have the effect, which many ardently desire, of reducing the amount of governmental regulation and control of economic life in other countries. The hard facts of modern life are all against such an outcome.

Government and Economic Progress

Experience has shown that the full exploitation of the resources of nature and the development of adequate means and facilities for distribution cannot be accomplished by private enterprise alone. Private enterprise is conducted primarily for profit; and for that reason there are a great many activities which, though they are absolutely indispensable to the economic welfare of society and to the success of private economic undertakings, cannot be undertaken by private enterprise because they cannot be operated on a profit-making basis. Of such character are the construction of streets, highways, railways (under some conditions), canals for navigation and irrigation, the operation of fish hatcheries, the maintenance of forest reserves, the coinage of money, and the conduct of many different kinds of research enterprises. It has not only been necessary for government to assume the responsibility for undertakings such as these, but it is invariably true that countries in which government has failed to meet these responsibilities are backward and undeveloped economically. Just how far government should go in fostering economic progress, is a question that has engendered much controversy; but every thinking person realizes that no governmental activity at all along this line is far more calamitous than too much.

Government and International Economic Relations

Ideally, perhaps, the world should be a single unit for production and distribution; but that is not the way in which the world is organized, nor the way in which production and distribution are carried on. National feeling is so strong that the people of each country feel that it is the business of their government to protect them against competition from other countries and to provide them with every possible advantage in competing against foreign countries. The American farmer, the American manufacturer, the

American miner, the American fisher, the American merchant, and so on, do not want to face foreign competition in the American market; and they accordingly demand that the American government shall impose customs duties on imported goods that will give American goods a great advantage in the American market. But the American farmer, the American manufacturer, and all the rest want also to be able to sell in world markets and to meet the business interests of other countries on equal terms. Quite naturally, therefore, they demand that their government shall not only protect them in the domestic market but shall render them all possible assistance in capturing foreign markets. The same thing of course is true in all other countries.

Hence the various governments of the world diligently obstruct the free operation of economic forces by erecting tariff walls against one another. This has the effect of creating a number of antagonistic, if not actually hostile, economic entities which are unlike the economic groups which exist inside national boundaries in that they are subject to no superior authority or control. That is why the economic struggle between nations so often leads to war; there is no international government to prevent contending nations from resorting to violence in order to achieve their economic ends. Each government responds to the pressure of its own economic interests to establish protective tariffs, to grant subsidies and special favors, to demand that its nationals shall have protection and equality of opportunity when engaged in trade in foreign countries, to extend its territorial dominion so as to obtain raw materials and supply markets; at once it finds itself in conflict with the governments of other countries which are pursuing a similar course. War may not result in all cases, but the different governments of the world are continuously involved in difficulties and misunderstandings growing out of the ramifications of their economic life. And it is a curious paradox that although there is no international government to regulate the economic life of the world as a whole, yet the character of international economic relations is determined almost entirely by the competing and conflicting economic policies adopted by upwards of a score of separate and independent governments.

CHAPTER VI

THE SCOPE OF GOVERNMENTAL ACTIVITY

We come now to the age-old controversy as to the proper scope of governmental activity. Ever since government came into being men have differed radically, and sometimes violently, as to the rôle it should play in human affairs. This controversy has raged among politicians and statesmen, among rulers and subjects, among economic and social groups of all sorts, as well as among scholars and philosophers. It is a burning question today, and doubtless will be to the end of time. Indeed, if the day ever comes when all men agree as to the place of government in human relations, we may be sure that society has ceased to be a dynamic, developing organism.

Before taking up the various doctrines with reference to the proper scope of governmental activity we should clearly understand the limitations under which all thinking on that subject must be done. No person is capable of completely detaching himself from his environment, his life's experience, his whole psychological make-up, and of thus viewing the affairs of this world with the disinterested objectivity of a disembodied spirit. It simply cannot be done. As one would expect, therefore, every doctrine of state activity that has ever been evolved bears the tell-tale fingerprints of its authors and exponents, betrays their intellectual and psychological limitations, reflects their prepossessions and prejudices, is conditioned by their social and political experience, and is shaped by their interests and activities. That explains why every person is naturally inclined to accept as fundamentally and eternally true the particular system of thought about state functions which most nearly coincides with his own intellectual, psychological, and social background. The only way to correct this tendency is for each person thoughtfully and dispassionately to analyze the factors which enter into his own point of view, and at the same time to try honestly to understand the underlying causes of the viewpoints of those with whom he disagrees. This, and only this, will produce rationalism in politics.

The Doctrine of Anarchy

The point of view of the anarchist is very simple and very easily understood. It is simply that the state should not exist at all. Government by force, the anarchist believes, is an evil and unnecessary factor in human affairs, and ought to be abolished. Actuated by unbounded faith in human nature and profound distrust of all governments, the anarchist argues that the basis of society should be voluntary coöperation, and that in such a society all necessary social control could and would be effected through psychological forces.

It is significant that anarchistic doctrines have developed only among persons or groups who have suffered greatly at the hands of ruthless and irresponsible governments, or whose ideas have taken form in a social and political environment such as to breed extreme distrust of political processes and extreme discontent with political authority. It is no accident that such countries as Russia, Austria, Prussia, and latterly certain sections of the Near East and Far East, have been the world's principal hotbeds of anarchism.

Of course it is needless to say that no such thing as a state of complete anarchy has ever existed. Governments have often been destroyed by revolution, but they have always been replaced by other governments, equally potent although under the control perhaps of different elements of society. It is possible by a romantic flight of the imagination to conceive of a society in which there would be no coercion, but there must needs be a profound transformation of human nature before such a dream can descend to the realm of reality.

The Doctrine of Individualism

Socially and politically those who embrace the doctrine of individualism are the polar extreme of those who believe in anarchy; and yet the two doctrines have much in common. Exponents of the individualistic or, as it is sometimes called, *laissez-faire* doctrine believe in the utmost possible degree of individual freedom from political restraint. Government, they admit, is a necessity, though an unwelcome one. It must exist to preserve order, protect life, liberty, and property, and to maintain the stability and unity of society; but beyond such restrictions as are absolutely necessary to accomplish these objects, the social and economic affairs of the individual should be exempt from governmental interference. Advo-

cates of this doctrine contend that each individual knows what is best for his own interests, and that, if left free to act of his own accord, the individual will always pursue his own best interests. Conflicts of individual interest presumably will be adjusted through the operation of certain inexorable laws of nature, such as the law of supply and demand and the law of the survival of the fittest. That is to say, those who in pursuit of their own selfish interests are best able to accommodate themselves to competitive conditions will flourish and succeed, while those whose self-centered activities are unsuited to a state of ruthless competition will fail and eventually perish. Governmental interference with individual freedom would prevent this happy consummation.

The doctrine of individualism has been very popular at different times in the past and has some champions even at present. It has been a most effective polemic weapon in the struggle against the pretensions of autocratic and bureaucratic governments, and in the early part of the present industrial era it was especially serviceable in bringing about a removal of many pernicious governmental restrictions upon individual initiative. It is a curious fact, however, that it has only been advanced by persons in a position to benefit by the absence of governmental interference in economic life, or by persons belonging to social or economic classes which would so benefit.

In its extreme form the doctrine of individualism has been shown to be specious and unsound. The idea that individuals always know and do what is best for them will not bear close examination. Nor is it true that a state of free competition will accord to each individual a chance to succeed in proportion to his natural ability and diligence of effort. In truth there is little reason to believe that the elimination of all governmental restrictions upon individual freedom or confining government to a few indispensable police functions would result in a genuine state of free competition. Governmental regulation and control may result in altogether too much tinkering with the law of supply and demand and other economic laws, but there is conclusive evidence that the absence of governmental regulation and control would result in an equal amount of such tinkering on the part of selfish economic interests. The idea of absolutely unrestricted freedom of economic life as between the honest and the dishonest, the scrupulous and the unscrupulous, the fortunate and the unfortunate, the Haves and the Have-Nots does not excite universal enthusiasm. And if the survival of the fittest means the survival of those who can best adapt themselves to an

environment which invites every individual to consider his own interests first, last, and all the time, it is to be feared that the type of being who would emerge victorious in the economic struggle would not be the one best fitted to advance the welfare of society as a whole.

The Doctrine of Socialism

Socialism is the complete anthithesis of both anarchism and individualism. According to the socialist doctrine governmental activity should more or less completely supplant individual activity in every phase of life. The varieties of socialism are too numerous to be discussed here, but they are all founded on the same basic idea, namely, the substitution of collective activity for individual activity in most of the important departments of life, and particularly in the economic sphere. Private property would almost entirely disappear, although some socialists do not oppose private property in what they call "consumption goods", i. e., food, clothing, personal effects, household goods, and houses and land used for private homes. All the factors of production and all agencies and instrumentalities of distribution would be owned, controlled, and operated by the state. All land (except possibly that used for homesites) and natural resources would be taken over by the state; labor would be completely subject to governmental authority, because every one would work for the state and draw his sustenance therefrom; capital, too, would be state-owned and state-controlled, as it is necessarily appurtenant to land and labor. Government would thus displace private initiative in all agricultural, industrial, and commercial operations, and would in addition closely regulate such social institutions as the family, the church, and the educational system.

Communism is an extreme form of socialism under which the last vestiges of individual freedom and private property disappear. Under communism all forms of property would be owned and enjoyed in common through the medium of the state. The family would be merged with the state; parenthood would mean little more than procreation, for all children would be wards of the state, to be cared for, trained, and educated by the state and to be employed by it from birth until death. Religion would be completely assimilated to the state—indeed, there probably would be no religion other than worship of the state. To put it briefly, the individual would be completely submerged in the community, and the community would be completely identified with the state.

There is nothing new or novel about the socialistic ideal of government; on the contrary it is one of the oldest political ideas of which anything is known. Certainly it goes back as far as the time of Plato, and probably much farther. Nearly every utopian dreamer in the history of the race has founded his vision of an ideal society upon a socialistic or semi-socialistic basis; nearly every protestant against class privilege and vested interest has found the socialist theory most alluring and has proposed some form of socialism as a remedy for the woes and ills of society. It is quite natural that this should be so. To the idealist nothing would seem more plausible than that a society in which individual interest would be subordinated to collective interest, as determined and enforced by society's most powerful collective organ, the state, would be bound to function in such a way as to promote the highest good of all. And to the champion of the submerged and oppressed it would naturally seem quite reasonable to suppose that the power of the state could and should be used to destroy all forms of special privilege and to institute a régime of justice and equality. Such philosophies are as old as government itself. It remained, however, for Karl Marx (1818–1883), a German Jew, whose thinking was profoundly influenced by the revolutionary spirit of Nineteenth-Century Europe and whose emotions were deeply disturbed by the brutal and ruthless commercialism of his day, to convert socialism into a militant political movement. It was he who perfected the theory of economic determinism, the idea of class war, and the doctrine of proletarian revolution as a means of appropriating the power of the state for the benefit of the working class.

Before the Bolsheviki seized control of the government of Russia, the world had never known a strictly socialistic state. It is not possible in the space available here to present an adequate discussion of the Russian experiment; and since the matter is so highly controversial, prudence dictates that it should not be discussed at all unless it can be treated in full. Suffice it to say, therefore, that, outside of Russia at least, the majority of people are convinced that state socialism in Russia has been a calamitous failure. The retort of the socialist is that this opinion is the result of gross misrepresentation and false propaganda on the part of governments and economic interests opposed to socialism. In view of the impenetrable welter of charges and countercharges surrounding this subject, the careful scholar can only say that the capitalistic and socialistic points of view are so utterly irreconcilable and so deeply hostile to one another that there has doubtless been plenty of lying

(both intentional and unintentional) on both sides. Time will settle the issue, as it has settled many other great controversies; but whatever the outcome, the scientific student of government cannot cease to be grateful that the experiment has been made.

Gild Socialism

There is one body of socialist thought of comparatively recent origin which deserves special attention because of the radical changes it proposes in the constitution and character of the state. Most socialists, especially those of the Marxian school, accept the classical theory of the unified territorial state with supreme power (sovereignty) to make and enforce laws applicable to all subjects and to all persons and things within its territorial boundaries. The gild socialists, however, propose and advocate an entirely different order of society in which the state as we now know it would almost entirely disappear. It is the doctrine of this group of socialistic theorists that the social and economic affairs of mankind, especially the latter, should be regulated and controlled by self-governing groups somewhat after the pattern of the trade gilds of the Middle Ages. Accordingly they propose to hand over to self-constituted groups of producers in each field of industry the major powers and functions of government in respect to the affairs of that industry and the persons engaged in it. To the territorial state they would reserve only the power of coördinating the activities of the various self-governing groups, of dealing with matters affecting members of different groups in the same way, of protecting citizens as consumers, and of exercising the traditional police function of protecting life and property.

Under this scheme, which is generally called the pluralistic state, there would be no less governmental interference with individual freedom than under the unified, or monistic, state, and there might be much more; but the power of government, instead of being exercised through one central agency organized on a territorial basis, would be decentralized and scattered among a large number of different groups organized on an occupational basis. The central government, a mere remnant of the present territorial state, would then act as a sort of federal agency to bind together these autonomous groups and perform functions which they separately could not perform. Pluralism has achieved a decided vogue during the past decade, and has made a deep impression upon many persons who are not strictly speaking socialists. The upshot of this has been

the development of a sharp line of cleavage and an equally sharp controversy between political theorists of pluralistic persuasion and those who adhere to the older monistic view.

Pluralism vs. Monism

The pluralistic attack upon the unified sovereign state proceeds along many different lines only a few of which can be noticed here. The pluralist contends that there is abundant evidence to show that political society does not consist merely of a mass of otherwise unassociated individuals, and that the state is only one of many coexisting social groups and associations, any number of which are far better adapted to perform governmental functions in their peculiar sphere than is the state and have an equal or better claim upon the allegiance of the individual. It is therefore said to be not only morally indefensible but fundamentally unscientific for the state to exclude these other groups from a share in the process of government. It is also claimed that the defects of our present state organization are strikingly revealed ir the field of international affairs. The rivalries among sovereign states, which are looked upon as artificial entities, are said to prevent natural alignments on the part of individuals and groups having a common interest the world over and thus to provoke and stimulate competition and conflict along political, geographical, and racial lines. Furthermore, it is contended that the modern view of the nature of law sustains the pluralistic theory; for law, according to the views held by contemporary students of jurisprudence, is not so much a mandate of sovereign authority as a system of social rules which have grown up independently of the state and rest primarily upon sociological sanctions. The state is thus held to be the mere agent of the law, and the givers or makers of law are the numerous social groups and associations whose activities and interrelations give birth to generally accepted rules and practices.

The monist meets these arguments by denying, in the first place, that the pluralist has correctly interpreted the monistic doctrine. When the pluralist states that the monistic theory refuses to recognize the group composition of society and attributes to the state the highest degree of rational and moral perfection, he is exhibiting a deplorable ignorance of the writings of monistic philosophers. It is true that such views have been put forth by a few extremists, but they cannot be said to be fairly representative of the great body of monistic thinkers. The monist argues that the unified sovereign

state does not and never has demanded the full allegiance of its subjects to the exclusion of all other group affiliations, and that there is ample opportunity in the monistic state for the fullest practicable development of all social and economic groups. He maintains, however, that the sovereign state does perform an indispensable function in adjusting and adjudicating the clashes between competing groups, in regulating matters of common concern, and in promoting the welfare of society as a whole. For this reason the monist holds that all groups must necessarily remain subordinate to the state. All pluralists, indeed, are forced to admit that some sort of central political authority is necessary, and the weakest point in their whole system is the inconsistency and vagueness which characterize their attempts to show specifically and concretely how the powers of government may be successfully distributed between the central authority and the many social and economic groups which are to exercise such powers. The monist, while recognizing the shortcomings of the sovereign state in the international sphere, does not see how matters would be bettered if the various states of the world were to be organized on a pluralistic basis; for to his mind the rivalries of groups organized along industrial or occupational lines are just as likely to produce international conflict as the rivalries of groups organized along geographical, racial, or political lines. And as for the argument that law is the product of group processes rather than of state decrees, to the monist this does not seem important; for whatever the truth may be, it is an undeniable fact that something very like the state is necessary to give the law conclusive authority and universal application throughout society.

The Pragmatic Conception of State Functions

There is a growing belief in all parts of the world that the only true test of the propriety or impropriety, wisdom or unwisdom, of state interference with individual and group freedom is the practical result of such interference. If the result is good, state interference is sound and justifiable; if the result is bad, the contrary is true. This pragmatic conception of the rôle of the state does not assign to government a fixed and unchangeable place in human affairs. Government is held to be necessary not only to maintain order and protect human rights, but also to foster conditions conducive to the well-being of all members of society. If certain results essential to the welfare of all or any considerable part of the community can be achieved only by governmental action, or can be more success-

fully achieved by governmental action than in any other way, then it is the business of government to undertake to accomplish those results. And, on the contrary, when it appears that such results may be best attained by a large measure of individual or group freedom, then governmental activity should be kept at the irreducible minimum.

Thus it is seen that utility is the criterion and empiricism is the method by which the proper scope of government is to be determined. By a process of trial and error it has been demonstrated that the water-supply system in a modern city should be owned and operated by the city government; and in the same way, and perhaps with equal conclusiveness, it has been demonstrated that it is not a good thing to have a governmental monopoly in the field of retail merchandising. The first, accordingly would be a proper function of government, while the latter would not. Changed conditions in the future might, of course, bring about a reversal of this conclusion. It is at once obvious that such a doctrine leaves much to be desired in the way of precision and all-sufficiency; for it does not provide a sovereign rule for all cases. To the formulistic mind this is very objectionable, because it leaves so much debatable ground and because it virtually means that in every case the state should chart its course according to the practical exigencies of the situation.

Present Tendencies

It is easy to see what one wants to see, to believe what one wants to believe, and those who are looking for a sign seldom fail to find it. It is not surprising, therefore, that exponents of many different schools of thought find in the present tendencies of society proof positive of the correctness of their many and divergent views. Gild socialists and pluralists of all varieties are sure that the growing strength and solidarity of trade unions and other economic groups is an unmistakable portent of the eventual decentralization of political power and disappearance of the sovereign state; theorists of the monistic school, socialistic and otherwise, read the signs of the times in a different way altogether, believing as a matter of fact that the rise of strong and aggressive economic and social groups will call for the building up of a much more powerful and pervasive central political authority than has ever been necessary in the past; and many persons holding individualistic views profess to see in the various trends of the present day indications of a definite

repudiation of paternalism and promise of a return to the robust philosophy of *laissez-faire*.

What is the truth? Prophecy is dangerous business, but one does not have to be the seventh son of a seventh son to perceive a few unquestionable facts. The first is that the powers of government and the scope of governmental activity have been prodigiously augmented during the past century. The second is that this development has taken place because the acceleration and complication of social and economic life since the Industrial Revolution have brought into existence an endless series of difficult problems whose solution has become a duty and responsibility of the state for the simple reason that society had no other organs adequate to that end. The third is that social and economic change, and the resulting complication of the processes of social and economic life, are going forward more rapidly today than ever before in history. The fourth is that society has not as yet evolved any organs or institutions other than the state upon which it seems willing to rely to any great extent for the solution of its manifold problems. The reader may draw his own conclusions. What we face, to borrow the trenchant phrase of Grover Cleveland, is "a condition, not a theory"; and until there are other social organs and agencies which are capable of coping with the great problems of the day and which society is willing to trust with that responsibility, there is no reason to anticipate any diminution of state authority or any shrinkage in the scope of state activity.

In conclusion it might be added that modern sociologists, economists, and political theorists of a realistic cast of mind are, generally speaking, coming to the position that there is and can be no absolute rule for the determination of state policy with reference to interference with group and individual freedom. Everything depends upon the conditions under which the government has to operate and the extent to which its underlying social and economic organization facilitates the solution of common problems by private rather than governmental activity. The determining factors are as a rule the extent of its territory, the number of its inhabitants, the homogeneity or heterogeneity of the population, the traditions and customs of the people, the diversity of its social life, and the nature of its economic development.

CHAPTER VII

THE PROCESS OF GOVERNMENT

The traditional or conventional view of the process of government is bottomed upon the belief that the state is an institution which exists to consciously promote the best interests of society as a whole and that society as a whole speaks and acts through the state. Society is looked upon as a vast aggregate of individuals who owe allegiance to a common government and whose various groupings or subdivisions, whatever they may be, have little or no relation to the process of government. Under this view the process of government consists of the ways and means whereby the people as a whole influence their government and whereby the government acts in making and executing decisions for the advantage and benefit of society as a whole.

The Newer View of Society

This poetic picture of the process of government has now been displaced by a more realistic conception which is predicated upon a better understanding of the true nature of society. As has been pointed out in earlier chapters of this book, modern sociologists do not regard society as a monolithic structure composed of tiny particles called individuals, but rather as a piece of masonry composed of many different bricks and stones called groups. These groups are not homogeneous; they do not have identical interests and objects; they do not subordinate their own particular and special interests to those of society as a whole. On the contrary, most of these groups are widely divergent in character and purpose; the interests and objects of many of them are antagonistic and conflicting; and the more powerful and aggressive of them are engaged in a relentless struggle to attain their own ends and to impose their own will upon society. Yet, because of certain broad common interests which they have on account of their geographical position, their industrial and commercial situation, their racial or cultural associations, or their historical background, they are bound together

in a larger entity called society, whose chief prop and most powerful institution is the state.

The State and the Group Struggle

We have noted in previous chapters that the state is the principal agency by means of which the overlapping, conflicting, and divergent interests of different social groups may be adjusted, composed, regulated, and controlled. It is also society's sole institution for dealing with the many matters which affect all groups. It is clear, therefore, that the state is a vital factor in group life and group relations; but what of the effect of group life and group relations upon the state and the process of government? The latter aspect of the social process has not until comparatively recent times received the attention it has deserved.

Since the state is the institution through which force is applied, it occupies a pivotal position in the social system. Any group or combination of groups getting control of the state may reasonably expect to impose their will upon society. And even though it may not be possible for them to dominate the state absolutely, they may be able to exert sufficient influence upon its operations to bring about a partial realization of their objects or to prevent the complete ascendancy of rival groups. What could be more natural, then, than that competition among groups in the various domains of social life should largely resolve itself into a struggle for control of the state or for a commanding influence upon state processes? If that is true—and no other conclusion is possible if we accept the modern view of society as a complex of interacting and ill-adjusted, if not antagonistic, groups—then the process of government is very easy to comprehend. It is simply the sum total of all the ways and means by which many different interest-groups influence and control, or strive to influence and control, the activity of the state.

Interest-Groups and Political Processes

Many political thinkers, both ancient and modern, have perceived the causative relation between the multifarious political activities of the different interest-groups which make up civil society and the process of government. The idea has never been more clearly expressed than by James Madison in the now famous Number Ten of the *Federalist:*

A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment of different leaders ambitiously contending for preëminence and power; or to persons of other descriptions, whose fortunes have been interesting to human passions, have in turn divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to cooperate for the common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors and those who are debtors fall under like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of government.

Among the men who shared with him the imperishable glory of framing the American Constitution, Madison's views were generally accepted as a plain and common-sense interpretation of obvious political facts. These men were under no illusions as to the underlying realities of governmental processes, nor had they any doubts as to the interests which it was their business to represent. But somehow in our later history, as the spirit of democracy and the doctrine of human equality gained ground, the Madisonian philosophy was brushed aside, and it came to be worse than heresy for a public leader to suggest that civil society was anything but a great brotherhood or that government was anything but an institution "of the people, by the people, and for the people".

The trend of opinion today, however, is back to the views of Madison, Hamilton, and the other fathers of the Constitution. There is a large and growing body of thinkers who agree with Bentley that, "All phenomena of government are phenomena of groups pressing one another, forming one another, and pushing out new groups and group representatives (the organs and agencies of government) to mediate the adjustments. It is only as we isolate these groups, determine their representative values, and get the whole process stated in terms of them, that we approach to a satisfactory knowledge of government".[1] Many contemporary thinkers, indeed, are willing to be even more specific and to declare

[1] Bentley, *The Process of Government*, p. 269.

that the only groups whose influence is consistently and powerfully effective in the process of government are the great economic interests, such as the landed interests, the transportation interests, the manufacturing interests, the mercantile interests, the labor interests, and so on.

Be that as it may, it is important for us to recognize that from the modern point of view every aspect and phase of the governmental process is to be interpreted in terms of group pressure and group activity. Through political parties, through the process of legislation, through certain phases of administration, and through the judicial interpretation of laws, all sorts of divergent and antagonistic interest-groups are conceived to be pressing for the realization of many different objects and ends. No single group or set of groups is ever completely or permanently triumphant—that would not be conducive to the good of society as a whole—but there is a never-ending series of compromises, adjustments, partial victories, partial defeats, advances, retreats, realignments, bargains, and combinations. Such are the elements of the process of government, and of such materials must the path of progress be paved.

Some Concrete Illustrations

The effects of group pressure are to be observed in the operation of all departments and divisions of government, and indeed in almost every aspect of the governmental process from the informal and unofficial activities of political parties to the solemn transactions of the courts. This is not to say that every act of government is dictated by some organized group or combination of groups, but simply that whatever is or is not done in course of the process of government may in nine cases out of ten be shown to have resulted directly or indirectly from group activity and group influence. Such activity and influence may be the outcome of group domination of the machinery of government, or, as is more often the case, it may result from deadlocks and compromises among rival groups, thus affecting the course of government negatively as well as positively. Numerous illustrations of this phenomenon will occur to all persons who are at all familiar with public affairs.

Of the recent events in American national politics none has excited more comment than the refusal of the national senate to confirm the appointment of Mr. Charles B. Warren to the office of attorney-general. There has been a disposition on the part of some to regard this affair as nothing but a piece of malicious obstructionism on the part of a senate jealous of its prerogatives and anxious to demonstrate

its power. That, however, was the least significant phase of the Warren rejection and cannot be taken seriously by any one acquainted with the true inwardness of American politics. The combination which blocked the appointment of Mr. Warren was made up of Democratic senators from the South and West, Republican senators from the Middle West and Far West, and a few Independents and Farmer-Laborites, also from the Middle West and Far West. This combination was the upshot of a temporary alliance of senators who are spokesman of an array of clearly defined interest-groups whose actuating motives were partizanship, sectionalism, and economic interest. The Republican Party, as every one knows, is not a homogeneous entity. There is as much or more difference between Republicanism in the industrial East and Republicanism in the agricultural West as there is between Republicans and Democrats, and on some issues there is as much difference between Republicans in these different sections as there is between Republicans and Socialists. The nomination of Mr. Warren was opposed by a group of senators from the western states because he seemed to them to be too closely allied with certain corporate and industrial interests which are anathema to the western farmer; it was opposed by the Democratic senators on party grounds and also because many of the Democratic senators were representative of sectional and economic interests deeply antagonistic to the things Mr. Warren seemed to stand for; and it was opposed by the Independents and Farmer-Laborites for similar reasons and for the additional reason that they stand for a theory of government entirely different from that typified by Mr. Warren.

Leaving out of consideration the question of Mr. Warren's professional attainments and personal integrity, which after all were incidental considerations, it is easy to perceive that the real reason for his rejection by the senate was that he possessed qualities which made him appear to be the symbol of Wall Street and Big Business, and this was sufficient to precipitate a combination of the spokesmen of antagonistic interest-groups against him. No senator, of course, explained his position in those simple terms, for frankness is not a virtue of politicians. Good reasons are less dangerous in politics than real reasons, and besides a great many senators and representatives are not clearly conscious of the way in which they respond to group pressures.

Another event of recent memory which revealed in a striking way the underlying complex of interest-groups in our political processes was the Democratic National Convention of 1924. This aspect of

the now historic gathering at Madison Square Garden is clearly brought out in the following excerpts from William Allen White's little book, *Politics: The Citizen's Business:*[2]

The Democrats, in their convention, were at every point the perfect antithesis of their Republican neighbors. The Republican party, broadly speaking, and allowing for many exceptions, is recruited from the ruling classes of the land. They are orderly, exact, and purposeful in their intellectual and political processes. The Democrats, also speaking broadly and allowing for perhaps wider exceptions to the rule, come from the governing classes. They are Celtic in the East, cavaliers in the South, and free, unorganizable, and unsurrendered spirits, in the West. They have their moments of abandon. They take joy in their emotional expression. So always, a Democratic convention at its mildest, is full of pomp and ceremony, and at its freest, would complicate its ceremony with assassination, if it assembled a few degrees nearer the equator.

Tumult is ever the regular parliamentary order of a Democratic convention, and this convention of 1924 left home with dynamite in its satchel. It had two major issues upon its heart. Prohibition was one. The freedom of religious opinion and expression was another. A minor issue concerned the League of Nations, and aside from these three issues, nothing mattered.

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It was not by accident that this fire of burning issues consumed sixteen days of the Democratic convention and left the Republicans unscathed. The Republican party is geographically sectional. It functions but feebly, if at all, in the South, and also is as weak in its expression outside of the middle class. It is strongest among the upper middle classes.

Speaking pretty broadly again, for one must generalize, a Republican typically has no trouble with prohibition. He can get his liquor if he wants it, because he can pay the price, and he has a lot of interests in life which make liquor rather extraneous. He can worship his God, who generally is a Presbyterian, Congregational, Episcopal, or Methodist God, in his own pew and in his own way, without finding any economic restriction upon his faith. But your Democrat, being anywhere from the bread line to the governor's office, being half or two-thirds Irish in the city, and a Southern gentleman, in the rural states, has trouble with his liquor. It costs him too much. If he can afford to pay the price in money, the price in self-respect which he pays when he sneaks it, by buying of a bootlegger, sears his proud soul.

And also, one must remember that in the Democratic party are millions of citizens to whom the prohibitive price of bootleg liquor, and the daily need to get out of the dull routine of circumscribed lives, makes prohibition a vital issue. And then in opposition to all this, do not forget that out West are vast areas where the successful operation of prohibition for from ten to twenty years has created a solid body of public sentiment, supporting prohibition. Therefore to oppose prohibition in a national platform would virtually turn thousands of deserving Democrats out of office. So the clash on prohibition, in the Democratic platform, came out of reality, and not out of a political fiction.

The economic position of millions of Democrats is also affected by their

[2] Copyright, 1924 by the Macmillan Co. Reprinted by permission.

religion. Your Catholic is no more clannish than a Methodist would be if the Methodist was isolated, as too often the Catholic is isolated in an American community. He does what any other man, Rotarian, Presbyterian or Scotchman, would do; he stands by his friends. If he is a foreman, he sees that his friends have work; if he is a ward leader, he sees that his friends have jobs; work and jobs mean life and comfort. Thus religion has an economic phase.

Your Catholic, therefore, finds himself facing an organization which opposes his religious freedom. The same organization meets in the Jew a keen competitor, who also lets his feeling for the ties of blood sometimes temper the edge of his bargaining sword. In the South, the negro rising in the industrial scale, demanding a larger share in the civilization which he is helping to build, meets the Southern cracker. There the economic phase of life translates itself into a social statement of the case. Mix up all this jealousy with ignorance, bigotry and the blind yearnings of a neglected social and economic class—white Protestant and native born—aspiring to be somebody politically; cover the whole with a sheet and pillow case and give it a pompous and terrifying jargon and behold the Klan—the Ku Klux Klan.

This tremendous clash in the Democratic convention, therefore, which began in the platform, and lasted with shattering force through over one hundred ballots, for a presidential candidate, had an economic basis. The Democrats on both sides of the issues of prohibition and the Ku Klux Klan are not satisfied with things as they are; they are aspiring. Their platform was, if anything, a cut or two below the Republican platform in intelligence and courage. But the soul of that Democratic convention, possibly twisted and distorted, and in large areas dull, was a soul terrifically aspiring. It represented a mood so different from the mood expressed by the Republican convention that it seemed to come out of another country, and another time, and possibly another race.

The issue of the League of Nations, which was for a few hours so vital in the Democratic convention, arose from mixed motives. The Irish and the Germans, naturally hating and fearing England, have distrusted the League, and with thousands of Western Democrats a feeling hung over from 1920, that the League caused their defeat. On the other hand, millions of business men and farmers have felt that the League, as a stabilizing power in world politics, would reëstablish normal commerce, stimulate prices, and make the world safe for the American dollar. So, more or less, the League of Nations issue was economic.

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The Japanese exclusion feature of the immigration law of 1924 is another good illustration of the power of interest-groups in national affairs. Ever since this law was enacted a large portion of the American press and a great many men in public life have been assuming a sort of apologetic attitude toward Japan, explaining that the exclusion clause does not truly represent public opinion on the Japanese question and was only inserted in the measure through machinations and combinations effected by relatively small groups of anti-Japanese agitators. Whether the total exclusion of Japanese truly reflects public opinion in this country no one can say, but

that the exclusion provision was incorporated in the immigration act because of the unrelenting and aggressive activities of certain cohesive minorities is beyond question. On this issue, then, a few small groups have, temporarily at least, determined the policy of the whole people.

The career of the Farm Bloc in Congress also illustrates the potency of interest-groups in the process of government. This small group of senators and representatives, disregarding normal party lines and divisions, effected an organization which held the balance of power and for a time virtually dominated Congress. Innumerable deals, bargains, and understandings were entered into with other groups and interests, and the net result was a process of give and take in which the Farm Bloc lent its support to measures of interest to other groups in return for their support on agricultural legislation.

Tariff legislation affords another excellent example of group activity in government. Duties on imported commodities are of vital importance to a great many different groups and interests, and whenever a revision of the tariff is undertaken these interests move heaven and earth in order to obtain duties favorable to themselves. There are so many conflicting and antagonistic interests and groups that tariff legislation generally results in a compromise which is a complete revelation of the relative political strength of the various groups and interests concerned.

Group pressure also profundly influences the action of the executive branch of the government. President Coolidge's veto of the soldiers' bonus bill was the result of his response to the sentiments of the dominant interests of his own section of the country. Careful study of the use of the presidential veto would disclose many other cases of quite similar character. The President's appointments to office, even to positions in the Cabinet and the Supreme Court, are often the result of pressure exerted by widely different groups and interests. It would not be accurate to say that President Wilson appointed Mr. Justice Brandeis because of pressure from organized labor, but it is nevertheless true that the demands of organized labor had much to do with Mr. Wilson's determination to appoint a man of the liberal point of view which Mr. Brandeis was supposed to represent. It would not be accurate to say that sectionalism determines the distribution of positions in the Cabinet, but it is a known fact that certain appointments are almost always made on a sectional basis. The western states invariably demand and usually obtain the appointment of a western man as secretary of interior; the Middle West regularly demands and quite as regularly gets the

secretaryship of agriculture; and the East in like manner commonly obtains the treasury portfolio. It would not be correct to say that organized labor dictates the appointment of the secretary of labor, but it is a fact that organized labor has always demanded the selection of a union labor man for that position and has never been disappointed.

It is sometimes considered almost seditious to suggest that the courts are ever influenced by group pressure, but candor obliges us to admit that there have been situations which could be explained in no other way. In the Dred Scott Case the Supreme Court of the United States was obviously swayed by the slaveholding interests, and in the Legal Tender Cases it is an undeniable fact that the appointing power was intentionally used to change the complexion of the Court so as to secure a reversal of the first decision. These and other famous cases which might be mentioned in the same connection are now matters of history; but many persons do not hesitate to declare that the courts of today are quite as susceptible to the pressure of interest-groups as the courts of any other period of our history. One calls to mind the recent remark of a nationally famous state judge who, when twitted regarding the flamboyant rhetoric of one of his opinions, said he had intended it to have the effect of a political speech. Very few judges would be as frank as Judge Wanamaker[3] was in this instance, but a survey of contemporary judicial opinions would disclose a great many in which the judge was consciously or unconsciously writing for a particular audience.

In state and local politics one may find numberless examples of the decisive force of group pressure. In the 1925 session of the Ohio legislature, members representing the city of Cleveland were very anxious to secure the enactment of a measure empowering cities to regulate motor "busses" within their own limits, while members from several other parts of the state were much interested in a bill to compel the reading of the Bible in the public schools. The Bible bill was bitterly opposed by most of the urban members of the legislature, and was referred to a committee which undertook to kill it by refusing to report it back to the legislature. The adherents of the Bible bill then served notice that they would defeat the "bus" bill unless the Bible bill were allowed to reach a vote. A compromise was then agreed upon and both bills were put through the lower house. The senate passed the "bus" bill but refused to put the Bible bill on its calendar. The Republicans controlled both

[3] The late Judge R. M. Wanamaker of the Ohio Supreme Court.

houses of the legislature, but the governor was a Democrat and had served notice upon the legislature of his intention to veto most of the financial legislation which it had passed. When the senate refused to pass the Bible bill, its backers, who were mostly Republicans, announced that they would not assist the Republican majority in passing any financial legislation over the governor's veto. The senate then capitulated and placed the Bible bill in such an advantageous position on the calendar that its passage was assured. Thus it is seen that not only the educational policy of the state, but also to a large degree its financial and utility policies were determined by the vicissitudes of a struggle between contending interest-groups.

Scores of incidents of similar character might be cited from the contemporary political history of every state and city in the land. Persons who are informed on political matters can usually recite dozens of cases of the same kind. Evidence that the conditioning and determining factor in the process of government is the underlying complex of group alignments and combinations is not merely abundant; it is almost overwhelming. Indeed, it can be truthfully said that not only is the operation of the machinery of government profoundly and decisively influenced by the varying pressures of an ever-changing array of interest-groups, but that to a large extent the very form and structure of government itself are determined by the same forces. Dr. Charles A. Beard has very lucidly shown how the rise of representative institutions and the resultant organic evolution of governmental machinery in England, France, Germany, United States, and many other countries have been affected by the underlying economic structure of the country and the political activities of different economic groups and interests.[4] The parliamentary system of England, the check-and-balance system of the United States, the soviet system of Russia, and all other schemes and systems of government have been more or less molded and shaped by the vicissitudes of the group struggle in those various countries. The principle of executive responsibility, as in England and other countries having the parliamentary system, is manifestly a by-product of the group struggle, and so is the principle of executive irresponsibility which characterizes the soviet system of Russia. The principle of judicial review, which is a salient feature of the American system of government, can be easily traced back to the group struggle which took place in the colonial and early national periods of our history. Whether a government is established upon a federal or a unitary basis depends almost entirely upon the out-

[4] Beard, The Economic Basis of Politics, Chap. II.

come of the inevitable conflict between different sectional and regional groups and interests, as may be seen in contrasting the political history of such countries as Germany and France or England and the United States.

And it may be said, finally, that if we wish to understand the real causes of the institutional developments which are taking place in the governments of all countries of the world today, we must delve deeply into the social and economic life of the country and analyze the texture, composition, and functioning of its fundamental interest-groups. There and only there can we hope to find a final explanation of the political developments which are going on under our very eyes.

CHAPTER VIII

CONSTITUTIONAL GOVERNMENT AND DEMOCRACY

The most salient difference between the process of government in former times and at present, is that in former times participation in government was confined to a very small fraction of the total number of individuals and groups subject to the authority of the state, while today the tendency is to extend the right of participation in government to every individual of mature years and to almost every conceivable group and class of people. The characteristic feature of government in the early history of mankind was the rule of the few; now it is the rule of the many. This transformation of the fundamental relation between government and society is, as we know, one of the most important developments in the whole history of the human race; but what many do not understand is that the process by which this transformation has come about affords the best possible clew to the true inwardness of contemporary political institutions.

One-Man Rule

In the great majority of cases the state first appears in history under one-man rule. A single individual in some way—perhaps by virtue of his prowess in combat, perhaps by reason of his magnetism and qualities of leadership, perhaps because of a belief in his supernatural origin or powers, perhaps by means of his wealth and possessions, or perhaps by a combination of all of these factors—has gained the right to impose his will upon society. He thus becomes the focal point of the process of government. His despotic will is the law of the state; he determines policies, makes decisions, adjudicates between individuals and groups, and executes his own decrees; and in all this he is responsible to no higher authority than his own conscience. But the fact that the power of government is concentrated in the hands of one person does not obviate the group struggle; it goes on with unabated intensity, each group endeavoring to realize its objects by means of pressure and influence exerted upon

or favors extracted from the monarch. Every close student of the history of despotic governments knows full well that the course pursued by every autocrat is largely shaped by the permutations of the group struggle that is ever going on within the state.

Sometimes the rule of the despot was not hereditary, and upon his death there would ensue a violent struggle to determine who should be the succeeding monarch. Eventually, however, in the great majority of states under one-man rule, the prerogative of rulership became hereditary, so that the despot could pass it on to his descendants, usually his eldest son. And when this did not occur, there was usually evolved some orderly method of settling the question of succession so as to avoid a civil war. Thus the system of one-man rule became institutionalized and acquired the sanction of custom and usage.

Oligarchic Government

There have been instances in which oligarchic rule, instead of one-man rule, appears to have been the first scheme of government to emerge. By oligarchic rule we mean the rule of a few, such as a small junta of military chiefs, a little group of nobles, a little circle of priests, or a small number of great landholders. The power of the state gravitates into the hands of these self-constituted groups in about the same way that it falls into the hands of the single ruler. Oligarchic government is not less autocratic than one-man rule, and it becomes institutionalized in much the same way. In substantially the same way also is the process of government in an oligarchic state affected and influenced by the struggle among competing and antagonistic social groups and classes. Indeed, if there is any difference at all it is that oligarchic rule mirrors the group struggle even more perfectly than one-man rule.

The Diffusion of Governmental Power

There is, however, something about political power that invariably makes against one-man rule and oligarchic rule, and leads eventually to a wide dispersion and diffusion of governmental authority. Concentrated political power cannot survive the ever-growing complexity of society and the continuous advance of civilization. As the territory and population of the state increase, as the processes of social and economic life become more tangled and complex, and as the inhabitants become more intelligent and more conscious of the nature and significance of political processes, there is an in-

evitable movement for the deconcentration and dissemination of governmental authority.

There are two fundamental reasons for this. In the first place, no autocrat and no group of oligarchs can be sufficiently wise and ubiquitous, or can have sufficient time and strength, to perform the multitudinous functions of government in a large and complicated state. Rulers of necessity must delegate to others a large measure of power and authority to decide and act for them; and, whatever the theory upon which such delegation takes place, every practical-minded person knows that in the realm of government at least the delegation of power means division and subdivision of authority. In the second place, and more significant than the foregoing, is the fact that power is the great object of the group struggle, and therefore that great and powerful interests are constantly pressing forward with insistent and irresistible demands to share in the exercise of political power.

First it may be the great military chieftains, the powerful nobles, the great landlords, or the higher clergy who resist absolute subjection to the despot or the oligarchy and thus succeed in wringing from their rulers reluctant concessions whereby they are admitted to participation in the process of government. Then may come the magnates of commerce, the lesser nobility, the smaller propertied interests, the trade gilds, and so on, demanding and obtaining, by resort to violence if need be, a share in the control and operation of government. And last of all the great mass of common folk—peasants, artizans, workers, etc.—are fired with political consciousness and rise with a demand that they too shall have a voice in governmental affairs. In some such progression as this the great drama of the distribution of political power has been enacted; in some such fashion has society moved forward from absolutism to democracy. It should be noted that there is a significant parallelism between the decline of absolutism and the development and distribution of private property, the growth of capitalism, and the evolution of business enterprise. The distribution of wealth and the diffusion of economic power have ever been vital factors in political evolution.

Constitutional Government

The course taken by society in its slow but tumultous progress from the rule of the few to the rule of the many has lain along the path of constitutional government. Whenever a group or in-

terest has succeeded in wresting from its rulers certain rights of participation in government and certain immunities from governmental action, it has generally sought to embody these rights and immunities in a solemn pact which would insure their inviolability and perpetuity.

Thus when the great nobles of England cornered King John at Runnymede in 1215, they forced him to grant them certain definite rights and to accept various limitations upon the power of the Crown, all of which were embodied in the famous document known as the Magna Carta, which is rightfully regarded as the cornerstone of English liberties. Subsequently other concessions were wrung from the Crown, additional limitations were placed upon the power of government, and other groups and classes gained certain rights and immunities in respect to the exercise of governmental power; these being embodied in such monumental instruments as the Petition of Right of 1628, the Toleration Act of 1689, the Reform Bill of 1831, the Parliament Act of 1911, and the Representation of the People Act of 1918. In this way there grew up through the centuries a settled system of arrangements determining in what ways and by what agencies and means the various powers of government should be exercised, how far the authority of rulers should extend, what rights and privileges should be enjoyed by different classes of subjects, to what extent various individuals and groups should have a voice in the process of government, and what should be the organization and procedure of the different organs of government. This scheme of fundamental arrangements controlling and conditioning the scope and operation of government in England is known as the constitution of England.

Constitutions like that of England are very rare at the present time; for in most countries the basic arrangements for controlling the distribution and exercise of political power have been cast together into a single instrument to which the name "constitution" has been given. For that reason the popular mind is prone to think of a constitution as merely a great historic document which was drawn up and adopted at some time in the past in order to protect human rights and set up a system of government suited to the needs of all the people; whereas in reality the document which we term a constitution is nothing more than a concrete and conclusive manifestation in paper and ink of a system of arrangements determining the distribution and controlling the exercise of political power—a system evolved no doubt through decades and possibly centuries of conflict among many different groups and in-

terests over the location and distribution of political authority.

It is only when we get this point of view that we can understand what constitutional government actually is—namely, an established and orderly scheme of organization and procedure in the exercise of governmental power, based not upon the arbitrary whim or caprice of a single person or small body of persons, but upon understandings, agreements, compacts, rights, immunities, and privileges that have become firmly established in consequence of settlements reached in course of the perpetual struggle over political power which goes on among the constituent units of the social system.

How Constitutions Are Made

Although the same underlying factors enter into the making of all constitutions, the external aspects of the process of constitutional development vary widely in different states. The British constitution, as we have seen, has grown by the slow process of accretion and has never been embodied in a single instrument. As a matter of fact, much of the English constitution has never been put into definite documentary form, but consists of long-recognized customs, traditions, and precedents. In most countries, however, social conditions have not been as stable and social change has not come as tranquilly as in England; and consequently the process of constitution-making has been more discontinuous, more deliberate, and often more violent. Monarchs oftentimes have been obliged, because of rebellion actual or potential on the part of their subjects, to grant and put into effect complete constitutions. In other instances the people or a certain part of them have succeeded in forcing the calling of some sort of constituent assembly empowered to frame a constitution; and in still other cases the people have gained the right on their own initiative to summon such a constituent assembly.

The American constitution furnishes a very instructive illustration. It was framed by a convention consisting of delegates representing the several states and was ratified by specially elected conventions in each state. It was an abrupt departure from the previous constitution (known in history as the Articles of Confederation), but that does not mean that it was entirely new and novel. The careful and intelligent student can readily see in the American constitution the results of more than two centuries of social and political development; and even the casual student of American history knows that it was made possible by a radical shift in group align-

ments as contrasted with group alignments during and immediately after the Revolution.

Virtually all written constitutions have come into being through somewhat similar processes. A constituent assembly of some sort draws them up, and they are put into effect by this body or by a process of ratification in which the people directly or indirectly participate. But the fact that they thus appear to be the result of single acts of sovereign authority should not lead us to overlook the long story of group conflict which must necessarily lie behind them.

What a Constitution Does

It will perhaps contribute to a better understanding of the nature of constitutional government if we set down in summary form the principal things which a constitution does.

1. Every constitution in some way or other sets the limits of governmental power. It makes no difference whether the constitution be the work of a fully representative constituent assembly, or simply the result of an act of self-denial on the part of a monarch, it definitely limits the exercise of governmental authority. What may be done and what may not be done in the name of government are declared and set forth; and to that extent at least the constitution becomes the source of political power.

2. A constitution determines the rights and obligations of subjects and groups of subjects with reference to their government, and also with reference to one another.

3. A constitution determines who may participate in the exercise of governmental power, and to what extent and how. Even under governments that are considered thoroughly democratic not all persons are permitted to participate in the process of government, and in governments of less democratic character a great many classes of persons are excluded from all voice in government.

4. A constitution lays down certain fundamental rules and establishes certain fundamental methods by which the governing officials of the state are to be chosen.

5. A constitution always determines in a general way, and often with great minuteness, how the government shall be organized, what powers shall be exercised by and through the various organs and agencies of government, and how the different organs and agencies shall be coördinated.

6. A constitution establishes in its own terms the fundamental and supreme law of the land, and therefore anything done in

contravention of the constitution is unauthorized and illegal.

These things mark the essential differences between constitutional government and absolutism. Constitutional government is not necessarily democratic government; but no government can be democratic that is not based upon a broadly grounded constitution.

Democracy

There are many possible ways of defining democracy, all of which have a certain element of truth in them. In the preceding section it was stated that democratic government is always constitutional government, though constitutional government is not necessarily democratic. Let us see what that means. The government of Japan is a constitutional government, though it is far from democratic; the same thing is true of the Soviet Government of Russia; the governments of Austria, Germany, and Turkey before 1918 were of the same type. All these governments had or have constitutions, very elaborate and detailed constitutions. Yet they could by no stretch of the imagination be deemed democratic.

And why not? The answer is found in the fact that these constitutions make a distribution of political power and provide for a system of governmental organization and operation which accord to certain individuals, groups, and classes a great many special advantages, prerogatives, and privileges. Democracy, on the other hand, is a type of constitutional distribution of political authority and of organization for governmental purposes which throws open the enjoyment of political power and extends the favors, protections, and guarantees of the state to all individuals, groups, and classes on the same terms. In other words, democracy places us all on the same political footing; gives us all theoretically the same rights, the same obligations, the same privileges, the same opportunities, and the same advantages. That does not mean, of course, that under democratic government we may all enjoy in the same manner and to the same degree the practical, everyday results of governmental activity; for the group struggle goes on under democratic government just as under any other type of government, and the course of democratic government is quite likely to be deflected in one way and another by group pressure and group activity. Democracy does, however, or should, remove all arbitrary and unnatural discriminations as between different individuals and groups and give freer play to individual and group initiative than is possible under any other scheme of government.

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PART II

THE ORGANIZATION AND OPERATION OF GOVERNMENT

CHAPTER IX

THE MACHINERY OF GOVERNMENT

The process of government is not unlike other human enterprises; it is carried on by human beings, and consists for the most part of deciding what shall or shall not be done and of putting into effect the decisions so made. Upon reflection it is quite evident that much the same language could be used to describe the fundamental character of all collective activities. After all, group life and group activity reduced to the simplest terms is little more than a matter of arriving at decisions and getting them carried out. But in the case of government, which is the most extensive and elaborate form of human association, a great many technical and recondite terms are used to characterize these basic activities and the various organs and agencies by which they are carried on. For example, the various group activities and processes having to do with the making of decisions as to what shall or shall not be done are termed legislation; and the agencies and organs of government which perform legislative functions are known as legislatures, parliaments, congresses, diets, councils, or soviets. In like manner the numerous activities having to do with the carrying out of the decisions, rules, and policies established by legislation are generically known as administration; and the various administrative organs and agencies of government are known as ministries, executive departments, commissions, courts, and so forth.

Legislation and Administration Under Autocratic Rule

Under one-man rule, oligarchic rule, or any other conceivable form of autocracy, the functions of legislation and administration belong exclusively to the ruling despot or oligarchy. Under one-man rule the king, czar, or emperor is at once legislator, administrator, and judge. He may of course delegate a large part of the actual work to subordinates; but so long as they remain subordinate and all lines of authority actually converge in a single person, there is little occasion for the development of specially differentiated agencies

and organs of legislation and administration. Everything comes back to one person in the end anyhow. Much the same thing is true of oligarchic rule, except that the larger number of persons sharing the supreme authority under this form of government may result in some sort of settled division of lines of authority and responsibility. It is safe to say, however, that the absence of distinctly differentiated functional organs, such as legislatures, executive departments, and courts, is a characteristic and common feature of both one-man rule and oligarchy.

The Effect of the Diffusion of Governmental Power

With the diffusion of governmental authority a great change takes place. The power of making decisions for the state is now divided, many different groups and individuals being entitled to a voice in it. Under such circumstances it is obviously necessary to have some means whereby the different groups and interests which share the legislative power may be joined together so as to act as an organic whole. Otherwise there could be no legislation at all. That is why, in the development of political institutions, the rise of specially appointed legislative organs of government parallels the decentralization of governmental power. One of the best known examples of this is the evolution of parliamentary government in England. For every stage in the evolution of the English parliament and in the growth of its power there is a corresponding stage of decline in the power of the Crown and a further extension of political authority to previously unfranchised elements of English society.

The necessity for special agencies and organs of administration follows the distribution of governmental power in much the same way. When the function of administration inheres in the same individual or individuals who enjoy the power of legislation, there is no cause for the development of distinctly separate machinery for administration. But when the power of government, and particularly the power of legislation, is scattered among a large number of different individuals, groups, and classes, it is manifestly impossible for the same persons who perform the legislative function to put into effect the decisions which they make. Administration requires a continuity of service, a regularity of operation, a unity of procedure, and a promptitude of action that are not possible in a strictly legislative body; and consequently as the diffusion of political power has brought on the development of legislative organs of

government, it has by that very fact necessitated the development of special machinery for administration.

Representative Government

For the making of decisions which shall be binding upon the body politic it is necessary to have a scheme of legislative organization and procedure which is properly correlated with the prevailing arrangements as to the distribution of political power. In small areas, such as the city states of ancient Greece, the smaller Swiss cantons, or the New England towns, it is possible to bring together in one assembly all individuals and groups entitled to share in the exercise of political authority, and for them acting as a legislative body to perform the function of legislation. This method of legislation is called direct legislation. Except for very tiny districts and for certain modern variants called the initiative and referendum, direct legislation has long since ceased to be the customary mode of legislation. The reason is quite obvious. In states covering large areas and having many thousands or millions of inhabitants it is utterly impossible to mass together at one place all of the persons or groups who are entitled to participate in the legislative process; and even if it were possible, the assembly would be too large to transact business with any semblance of intelligence or dispatch. For these reasons it has been necessary, as the power of government has been progressively disseminated, to entrust the function of legislation to bodies of persons selected to represent the various persons or groups who are entitled to a voice in legislation. These groups of representatives, called parliaments, congresses, diets, reichstags, or what not, convene at stated times and places and in the capacity of agents enact legislation in behalf of and at the behest of those who selected them. Government based upon this process of indirect legislation is called representative government.

Practically all modern governments are in whole or in part representative governments. There is no modern state which does not have one or more legislative bodies of representative character through which legislative business is transacted. These legislative bodies sometimes have unrestricted legislative power, and again their power is circumscribed by a written constitution or by the prerogatives of a hereditary monarch. Sometimes these legislative bodies represent all groups and classes of people, and again they represent only a small section of the people, the remainder being voiceless in

legislation. Thus it is clear that representative government need not be democratic government. The soviet government in Russia is a representative government, but it makes no pretense at being democratic; the same thing was true of the governments of Germany and Austria before 1918.

As to administration, it is perfectly apparent that it must always be of an indirect or representative character; for even in the tiniest state with but a handful of people, it is impossible for the people directly to carry on the multitude of minute daily operations necessary to put into effect all acts of legislation. There are, however, a number of perplexing difficulties involved in the relation of administrative agencies and administrative personnel to the other parts of the governmental machinery. Generally it may be said that no government can be considered fully representative unless the various organs and agencies are just as responsible to those who hold the power of government as are the organs of legislation. If then the legislative machinery is strictly representative, but the administrative machinery is independent of control directly or indirectly by those who control the legislative machinery—for example if the administrative machinery is responsible only to a monarch, or is a sort of self-directing bureaucracy, or is vested with an indefeasible tenure of office—the government is to that degree non-representative. To render the administrative organs and agencies of government as fully representative as legislative organs, various expedients are resorted to, the most common being to have administrative officials directly elected by popular vote, to have them appointed and removed by directly elected officials, or to have the whole administrative system made subject to the control of the legislature.

Fundamental Difficulties in Representative Government

Representative government, as we have seen, is government in which legislation and administration are carried on by the chosen representatives of those who under the constitution are entitled to have a share in the process of government. The character of representative government must, therefore, depend upon the character of those selected to serve in a representative capacity; and their character in turn is manifestly dependent upon two fundamental considerations: (1) the basis of representation, and (2) the method of selection.

What or who should be represented in government? Dr. Charles

A. Beard, in his little volume entitled *The Economic Basis of Politics,* points out that in the early period of representative government the prevalent theory was that representation should be accorded to different social groups or classes, particularly those of an economic character. Certain economic groups, such as the peasants, farmers, industrial workers, or small tradesmen, were excluded altogether from participation in government; and the higher orders of society—the propertied interests—were given representation because of and often strictly in proportion to their relative wealth or property. It appeared that the states of both Europe and America were moving toward a balanced scheme of representative government based upon the complete representation of interest-groups as such, when the French Revolution let loose upon the world a torrent of ideas which totally changed the course of representative government. Of the three great catchwords of the revolutionary period, "liberty", "fraternity", "equality", the last in particular was destined to effect a profound metamorphosis in the process of government. The doctrine of the equality of mankind gave birth to the demand, which developed into an irresistible political movement, for universal and equal suffrage—a vote for every man and every man to have an equal vote. With universal and equal suffrage came a new conception of representation. It was no longer interests or groups that were to be represented in government, but individuals. And all individuals were equal. On this theory absolutely fair representation could be had by the simple process of counting heads, and giving to a thousand individuals here identically the same representation as a thousand there, to a hundred thousand in one place the same representation as to a hundred thousand in another place. Thus developed the now well-nigh universal practice of subdividing a country more or less arbitrarily into geographical districts of substantially equal population, each of which should have the same representation. Thenceforth representation was a mere matter of geography and arithmetic.

There is a growing conviction among students of government that this geo-mathematical conception of representation is not only unsound, but is also the cause of much of the malfunctioning of modern government. It is pointed out that while men as individuals may be entitled to equal rights and privileges, they do not as individuals have any political reality. Men do not achieve political consciousness and strive for political expression as individuals, but as members of groups having common political interests. The head-counting basis of representation, consequently, either prevents the

representation of these natural interest-groups and thus results in misrepresentative government, or it forces them to obtain representation indirectly, unofficially, and often surreptitiously and thus results in government by irresponsible blocs and cabals. It is urged that some way must be found to give representation and likewise responsibility to interests rather than individuals, if representative government is to be saved from complete breakdown.

The second great problem in representative government concerns the method by which representatives are chosen. It is clear that no matter what the basis of representation the method of choice must be such as to give full and true effect to the will of those entitled to be represented in the process of government. Unfortunately the systems of election used in most countries do not insure this result. More often than not the election process is so defective that it defeats the very purpose of the plan of representation. Thus under the district system of representation true and equal representation of human beings as individuals is rarely achieved; for the election methods used quite commonly force upon the people representatives they would not select of their own volition, or even worse than that place the decisive power in the hands of a clear minority of the voters of the district. Much the same objections may be urged against systems of election that have been employed in connection with different systems of group representation. It must be apparent, then, that there can never be a fair and reliable test of any plan of representation unless the election processes are of such character as to put that scheme of representation into actual operation. That is why electoral questions are of such vital importance in representative government.

Politics and Administration

It was stated earlier in this chapter that the process of government involves two basic types of activity: (1) that which has to do with the making of decisions, and (2) that which has to do with the executing of decisions. The former was called legislation and the latter administration. In representative government a somewhat broader classification is desirable. It is obvious that in representative government we have in the first category not only those activities which have to do directly with the making of public decisions—the determination of policies—but also all those activities which have to do with the selection and control of governing officials. To this phase of the process of government some political scientists have,

therefore, given the name "politics", while to the distinctly executive phase of government they reserve the name "administration".

Although the line of cleavage between "politics" and "administration" has not been strictly followed in the construction of machinery to carry on the work of government, it has come to be an axiom of political science that so far as possible these two types of activity should be assigned to separate and distinct organs and agencies of government. It is believed to be unsound for organs, departments, or officials whose functions are essentially political to be given administrative responsibilities and duties, and likewise for strictly administrative organs, departments, or officials to be given legislative duties and responsibilities. Political agencies, it is claimed, are inherently unqualified for administrative work, while the efficiency of administrative agencies is seriously impaired by the mixing of politics and administration. It is recognized, of course, that it is only through political processes that the social will may be determined and declared, and therefore that administration should not be made so completely independent of political control as to make it possible for administrative agencies to disregard or thwart the public will by failure to carry out faithfully and efficiently the decisions made by the political organs of government. But it is insisted that political control of administrative organs should be limited to such coercive action as may be necessary to insure faithful and efficient administration, but without extending to details of administration or enabling political organs to engage directly in administrative work.

In the field of administration two distinct types of activity are to be discerned. The first, consisting of the work of interpreting and applying the law to individual cases, is called judicial administration. There are some who contend that judicial administration is a separate type of governmental activity entirely distinct from legislation and administration; but the majority of modern students of government are of the opinion that judicial work is fundamentally executive in character and belongs in the category of administration. The second type of administrative activity has to do with the thousand and one different ministerial activities involved in carrying out a public policy. It embraces such things as the collection of taxes, the disbursement of funds, the purchase of supplies, the supervision and direction of forces of workers. It is sometimes called general executive work, to indicate its comprehensive character. It may include many special types of administration, such as financial ad-

ministration, public works administration, public health administration, and military administration.

Organs and Systems of Government

All governments have legislative organs, executive organs, and judicial organs; but in no two governments do these organs bear precisely the same relation to one another or to the people. This fact accounts for the widely differing types of government which are to be observed in the world today. One combination of executive, legislative, and judicial organs produces the parliamentary system; another combination of the same factors produces the check-and-balance system; a third combination produces the controlled executive system, a fourth the soviet system, and so on. In the next chapter we shall attempt to show how and why these different combinations take place.

CHAPTER X

THE EVOLUTION AND ORGANIZATION OF VARIOUS TYPES OF GOVERNMENT

It is not infrequently assumed that the types of governmental organization found in the different countries of the world have been made to order according to standard specifications and principles somewhat as an automobile is fabricated in a modern factory. Such of course is not the case, although the unintelligent fashion in which constitution-makers in some countries have sought to imitate schemes of government found in other countries affords some warrant for the belief. As a general thing, however, constitutions that are mere imitations of alien political institutions and that fail to sink their roots deep into the soil of native political habits and history, do not succeed or long survive.

Every scheme of government which represents a distinct type, or which is appropriately adapted to the political life of the people who live under it, is the product of a long and tedious process of evolution. When Gladstone spoke of the American constitution as being "struck off at a given time by the brain and purpose of man", he was indulging in poetic license. For, although the American constitution was formulated by a convention which met at Philadelphia in the summer of 1787, every well-informed student of the American constitution knows that it is necessary to go back a century or more in English and colonial history to discover the origins of the institutions embodied in that document and to explain their peculiar combination in that famous instrument of government. And what is true of the American system of government is even more true of other systems that have grown up in older countries and among peoples whose political origins go back to a much remoter past.

Factors in Political Development

The peculiar trends of political development cannot be accounted for in any country by a sole or single cause. It is impossible to

say that the unique combination of legislative, executive, and judicial institutions which constitutes the parliamentary system of England is attributable to one thing, while the different but equally unique combination which constitutes the check-and-balance system of the United States is due to other causes entirely. On the contrary, it appears that the evolution of governmental machinery in all countries is affected by the same fundamental factors operating in different relations and different media. Just what those fundamental factors are and just how they conspire to produce different results under different circumstances, historians and political scientists are not fully agreed. It is possible, however, to indicate a few of them.

One factor of admitted importance in the structural development of government is the character of the political antecedents of the people concerned. It is believed that the political psychology and political habits of a people are deeply influenced by their earliest political experiences, and that to a greater or less extent these characteristics are carried over to their later political life. Thus it is claimed that the Anglo-Saxon peoples, who had behind them many centuries of loose tribal government, were bound to react in a different way to the type of despotism which succeeded feudalism in Europe than were the French people, who had behind them several centuries of Roman domination. In the same way it is said that the political heritage of the English colonists in America was so different from that of the Spanish colonists that the two were bound to develop systems of government, which though superficially similar in many respects, are fundamentally different in operation.

A second factor in the development of political institutions, and one of paramount importance from the point of view of contemporary scholarship, is the character of the social and economic life of the people. The diffusion of governmental power and the creation of different organs of government are believed to result very largely from the pressure of various social and economic groups; and if this be true, it necessarily follows that the development of political machinery will vary according to the economic and social structure of society. It is urged, for instance, that England becoming a complex industrial and commercial state at a very early period was bound to evolve a different system of political institutions than France, Germany, or Russia, which for years remained practically self-contained agricultural countries. As society in England became more highly organized and differentiated numerous groups and interests had to be included in the process of government, and this

necessitated an organic development which did not occur in countries having a simpler and more uniform type of social and economic life.

Closely allied to this factor is the effect of the group struggle that is forever going on in every society. Bentley [1] says, "There is not a single function of government which is not supported on a powerful interest-group or set of groups from which it gets all its strength and social effectiveness". In effect, then, competing social groups in the struggle to achieve their ends act or strive to act through legislative, executive, and judicial agencies. No one group, ordinarily, is able to dominate all or any considerable portion of these agencies; and the group conflict thus resolves itself into a process of compromise, adjustment, and limitation. It is these arrangements which largely determine the form and inter-relationship of the different organs and agencies of government.

Geographical circumstances may at times be a further factor in the shaping of political institutions. In a compact, insular country, such as England, representative government may readily develop along different lines than in vast continental countries like Russia. Countries like France and Germany do not enjoy the security of geographical isolation which has been such a boon to England and the United States, and are consequently bound to tolerate a much higher degree of central authority than would be endured by the people of the latter countries.

It has been a favorite theme of certain theorists that some peoples are endowed with an inherent political genius that other peoples do not possess, and are consequently more prolific in political invention. According to this doctrine, innate political capacity or the lack of it are the principal factors in determining the course of political evolution among different peoples. It may be said that this venerable dogma is no longer generally accepted. It is recognized that political consciousness is much more highly developed in some peoples than in others, but it is believed that this can be explained by differences in social and economic organization.

To which of these factors is most weight to be given? The question cannot be answered categorically. Probably no single one of the factors mentioned can be regarded as solely or even chiefly responsible for the peculiar line of political development in any country; and it is certainly true that our modern political systems are the result of various combinations of all of them.

[1] *The Process of Government*, p. 235.

Legislative Organization

Legislative organization in practically all countries has taken the form of an assembly of representatives numbering scores and even hundreds of persons. It is the duty of these representatives to meet at stated times at the seat of government and transact the legislative business of the state. This assembly is usually divided into two branches or houses, which are supposed to represent different interests or groups. The two houses proceed independently, but the concurrence of both is necessary to the transaction of business or the enactment of law. This *bicameral* arrangement has been supposed to possess many advantages in the way of securing more careful deliberation and imposing checks upon hasty and ill-considered legislation. Historical research has shown that the bicameral system does not owe its origin so much to abstract theories of legislative efficiency as to the clash of group and class interests; and careful studies in recent years have demonstrated that it has some pronounced disadvantages as well as advantages. The bicameral system has been abandoned in several of the provinces of Canada, in a number of the cantons of Switzerland, in some of the states of the Australian commonwealth, and in the new governments of Finland, Esthonia, and Jugoslavia. Unicameral, or one-chambered, legislatures are common in municipal government in all parts of the world.

The two houses as a rule differ as to size, basis of representation, and tenure of office. The lower house is generally much the larger, much the more popular, and much the more transitory body. Membership in the upper house is sometimes hereditary, and when this is not the case the members are usually chosen by an indirect process and hold office for a long term of years or for life. In the United States members of upper chambers are elected by direct popular vote, but have a longer term of office and represent larger constituencies than members of lower houses. Outside of the United States lower chambers are much more powerful and influential than upper chambers, but in this country we confer upon upper chambers special powers which place them upon an equality with and even give them a certain preëminence over the lower chambers.

To a very large degree the character of the legislature and the nature of its procedure are determined by its relations with other organs of government. There are a few states, such as Russia, Hungary, Turkey, and Italy (for the time being), in which the legislature is little more than a consultative agency of the executive. It is dominated by the executive and in the end must accept the

decisions of the executive no matter what its own preferences may be. In a much greater number of states, and this number includes most of the states of Western Europe, the legislature is the dominant organ of government and closely regulates the activities of the executive and the judiciary. In the United States and the countries which have imitated the American system there is a threefold division of power as between legislature, executive, and judiciary; the three being considered coördinate in authority and operating as checks upon one another.

Executive Organization

The executive organization of modern states consists of the executive head of the state, the executive departments and agencies, the executive council (sometimes), and the executive service. Except for a few cases of which Switzerland and Russia are the best contemporary examples, the executive head of the state is a single person. He may be a hereditary monarch, an elected president, a prime minister elevated to the executive headship by a parliamentary majority, or a dictator whose authority rests upon no other foundation than military force. The executive departments are units of the executive system set up to deal with some particular phase of administration, such as finance, agriculture, commerce, or war. At the head of each department is an individual who is usually subject to the control and direction of the executive head, but sometimes the department is organized under a board instead of a single head. Executive councils do not exist in many modern states, and in the states in which they survive they have lost much of their former importance. They were originally bodies established to act in an advisory capacity to the chief executive and were frequently given authority to exercise certain restraints upon the chief executive. The executive service consists of the hundreds and thousands of permanent officials and employees who serve in subordinate capacities in the various executive departments and agencies. It is by them that the routine, day-to-day work is carried on.

In all democratic countries except the United States and those imitating the American system, the executive is the servant of the legislature. Under the parliamentary system the leader of the majority party in the legislature becomes the executive head (prime minister) and his chief associates in the leadership of the party form the cabinet and become heads of the various executive de-

partments. They are all regularly elected members of parliament and are responsible to the majority which has elevated them to executive office. If they lose the support of their parliamentary backing, they must resign their executive positions. In Switzerland the executive head, which is a council of ministers, is chosen by the legislature but is not politically responsible to it and does not participate in the work of the legislature. In the United States, as pointed out above, the executive and the legislature are on a coördinate basis.

Judicial Organization

The settlement of private disputes, the interpretation of the law, and the prosecution and punishment of criminal offenders are functions of government which in the early history of most states were performed by the executive. They are truly administrative in character, although they may be clearly differentiated from other administrative activities. As states have grown in area and population, and as the business of government has become more complex, these functions of judicial administration have been set apart from other administrative activities and entrusted to separate organs of government.

Judicial organization in all countries consists of an elaborately graduated and specialized series of courts for the trial of different types of cases. These courts are usually ranked in dignity and authority according to the character of the suits at law which may be tried before them. Inferior courts handle minor offenses and petty litigation; higher courts handle more serious crimes and the more important lawsuits; and the highest tribunals handle only cases of exceptional nature. Some courts try cases in the first instance only, while others hear nothing but cases appealed from lower tribunals. Some courts have both original and appellate jurisdiction. In most countries the courts are all organized as a single system; but in some countries there are two or more distinct systems of courts, as the federal and state courts in the United States and the private and administrative courts in France and Germany.

The relations between the judiciary and the executive and legislative organs of government are generally very complicated. Judicial independence is everywhere looked upon as one of the cardinal prerequisites of free government. This as a general rule means that the courts proceed independently of the other organs

of government in the adjudication of private controversies and that their decisions may not be overruled by the intervention of one of the other organs of government. In most countries the judges are appointed by executive action or a combination of executive and legislative action. In such cases they are subject to removal by the executive or by the executive and legislature acting jointly. The organization and procedure of the courts, the extent of their jurisdiction, and the compensation of the judges are commonly subject to greater or less control by the legislature or the legislature and executive together. On the other hand, the courts usually have authority to issue various writs and mandatory orders which are binding upon the executive and the legislature. In the United States the judiciary is coördinate with the legislature and executive and enjoys a degree of political independence and power that is unknown in other countries. Except for the federal courts and the courts of a few of the states, it is the practice in this country to elect judges by direct popular vote. Judges in this country hold office for life or for very long terms. And in addition to these protections they have the right, which the courts of no other country have, to declare acts of the legislature unconstitutional and void.

The Different Types of Government

The active forces in constitutional development in different countries have worked in and through the various organs of government in such different ways that there have grown up a number of distinctive combinations of legislative, executive, and judicial machinery which have come to be recognized as separate types of government. In England the course of evolution has been such as to put parliament—the legislature—in the dominant and controlling position, and to a certain extent even to incorporate the executive and judiciary in parliament. This system, known as the parliamentary system, has spread to France, Belgium, Holland, Italy, and a number of other European countries, as well as to the British dominions. In the United States the development has been such as to place legislative, executive, and judicial organs in a position of constitutional parity and to build up a complicated system of checks and balances between them. This check-and-balance system has been copied in a great many of the Latin American republics. In Switzerland the legislature is the supreme governing authority, but the executive and judiciary are independently organized and do not have any

political connection with the legislature. This is sometimes called the controlled executive system. Except in local government, it has not met with favor outside of Switzerland. In Russia there is a new and complicated system based upon soviets, or councils of workers and peasants. Local soviets choose representatives to provincial and regional soviets; these in turn choose representative to the All-Russian Congress of Soviets; this body chooses the All-Russian Central Executive Committee, which is the supreme legislative, executive, and controlling organ, but whose functions are largely carried out by the Council of People's Commissars chosen by it. In Japan, Turkey, and one or two European countries which are temporarily governed by dictators, the executive is the paramount and dominating organ of government. All modern governments may be classified as variants of these principal types.

Definition of Terms

At this point it will probably be helpful if we turn our attention to the definition of certain terms by which governments are classified in both popular and technical usage.

Autocratic government is government which is controlled by and responsible only to those who govern. The rulers rule in their own name and right without being subject to any will or authority superior to their own.

Democratic government is government that is responsible to and controlled by the governed. The rulers directly or indirectly are held accountable to the general mass of people, or to a major part of the people.

Limited government is government in which autocratic power has been subjected to certain constitutional limitations and restrictions, but in which full democracy has not been instituted.

Monarchical government is government in which the headship of the state, whether nominal or real, is a hereditary office confined by law to a certain family and descending by regular succession to various generations of that family.

Republican government is government in which the head of the state is chosen for a limited term of office by popular election or by an indirect process.

Unitary government is government in which there is no division of governing power according to territorial sub-divisions of the country.

Federal Government is government under which there is a con-

stitutional division of governing power between central and local units of government in such a way that each has a definite field of power in its own right.

The foregoing terms are not mutually exclusive. To classify any government accurately it is necessary to combine the ideas represented by these different terms. The United States, for example, is a democratic federal republic; Great Britain is a democratic unitary monarchy; Russia is an autocratic federal republic; Japan is a limited unitary monarchy; France is a democratic unitary republic.

CHAPTER XI

THE PARLIAMENTARY SYSTEM

The parliamentary system of government is the product of many centuries of political development, particularly in England. It first took distinctive form in that country about the beginning of the Eighteenth Century, when after the bloodless revolution of 1688 the prerogatives of the crown were so definitely and permanently curtailed that the ascendancy of parliament was assured. But it required still another century or more for the system to develop its most characteristic modern features. The revolutionary epoch in France was a period of reckless experimentation with all sorts of weird constitutional ideas, but through it all there is evidence of an unmistakable drift toward parliamentary institutions. After the deposition of Napoleon III in 1871 the Third Republic was established upon a parliamentary basis, and, despite the many conspicuous differences between the French system and its English prototype, the parliamentary basis has been maintained in France down to the present time.

Similar developments, varying only as to time and circumstance, had, by the end of the Nineteenth Century, taken place in Italy, Spain, Portugal, Holland, Belgium, and the Scandinavian countries. Thus at the time of the outbreak of the World War in 1914 all of Europe except Germany, Austria-Hungary, Russia, Turkey, Switzerland, and the Balkan states, was committed to the parliamentary system of government. The Russian Revolution and the defeat of the central powers resulted in the formation of many new states and new constitutions; and it is a significant and interesting fact that every new constitution adopted in Europe since 1917, with the exception of those of Russia, Hungary, and Turkey, has provided for a system of government conforming more or less closely to the parliamentary type. So we now have to add to the list of parliamentary states the following: Germany, Poland, Finland, Esthonia, Latvia, Lithuania, Austria, Jugoslavia, and Czechoslovakia.

The Supreme Legislature

The distinguishing characteristic of the parliamentary system is the supremacy of the legislature over all other organs and agencies of government and the organic union of the legislature and the executive through a cabinet which plays the dual rôle of legislative leadership and executive headship. The supreme power of the state is centered in parliament—the legislative body—and is exercised by and through parliament by means of such processes as parliament may ordain and establish. In England parliament is omnipotent; it can make and unmake the constitution at will; it can enact legislation of any kind upon any subject whatsoever; and it can set up and sweep away any and all other organs of government without any let or hindrance. Other parliamentary states, having written constitutions, have imposed certain constitutional limitations upon the authority of the legislature by specific reservations in the constitution or by delegation to other organs of government; but these do not in any case go so far as to undermine the position of the legislature as the supreme controlling organ of government.

The legislative assembly under the parliamentary system, save for two or three small countries, consists of two houses; but the two houses are not coördinate in power and authority. The upper chamber is invariably reduced to a position of secondary importance, and the real power of decision and control is vested in the lower chamber, as in the case of the House of Commons in England, the Chamber of Deputies in France, and the Reichstag in Germany. Upper chambers serve two purposes. In federal governments, such as Germany, they afford representation to the constituent states of the federal union as governmental entities; in unitary governments, such as France and England, they afford separate and special representation to the conservative or aristocratic elements of society. The lower chambers, representing the great mass of people, are chiefly and finally responsible for the conduct of government.

It is, however, in the cabinet and its relations with the legislature and the executive that we find the distinctive feature of the parliamentary system. The cabinet is a small group of individuals chosen from the members of parliament belonging to the party or partizan combination having a majority in the lower house. In parliament the cabinet serves as a steering committee to formulate and pilot through all legislation of importance. All policies and legislative proposals of any significance originate with the cabinet and are presented by it to parliament for consideration and action under the

leadership of the cabinet. In addition to their legislative activities the members of the cabinet also serve as heads of the principal executive departments and in this capacity control the executive organ of government. The presiding member of the cabinet, who is the recognized leader of the majority in parliament and the actual chief executive of the country, is called the prime minister. He is appointed nominally by the king, president, or other titular chief executive; but in reality he gets his position by virtue of being chosen leader of the majority group in the lower branch of parliament, and his appointment by the nominal chief executive is purely perfunctory. Upon being designated as prime minister he forms the cabinet by inviting certain of his colleagues in parliament to accept appointment as heads of executive departments.

As long as the prime minister and his cabinet retain the support of a majority in the lower branch of parliament they may continue to hold their executive offices and to act as majority leaders in parliament. They are, to use the phrase employed in parliamentary countries, "the government". But the sword is ever suspended over their heads; for they may at any time lose their backing in parliament. In England, when this occurs, they have two alternatives: (1) to resign and permit the formation of a new cabinet by the triumphant opposition in parliament, or (2) to bring about the dissolution of parliament and force a general election. If, as a result of the election, the people give them a majority in parliament, they are not obliged to resign; but if the people return an adverse majority, they must resign at once. In most of the continental countries under the parliamentary system only the first alternative exists, and it is, therefore, only possible to get a fresh expression of public opinion at the end of the fixed parliamentary term of office. A number of interesting minor variations are found, especially in the newer constitutions.

The Position and Character of the Executive

All parliamentary governments have a titular executive head, who is either a monarch or a president. In either case his functions are primarily social, ceremonial, symbolical, and titular. It is said that in England the king reigns but does not rule, and that in France the president neither reigns nor rules. That aphorism just about epitomizes the position of the nominal chief executive in parliamentary countries, although some of the newer constitutions do attempt to give the titular chief executive a position of greater

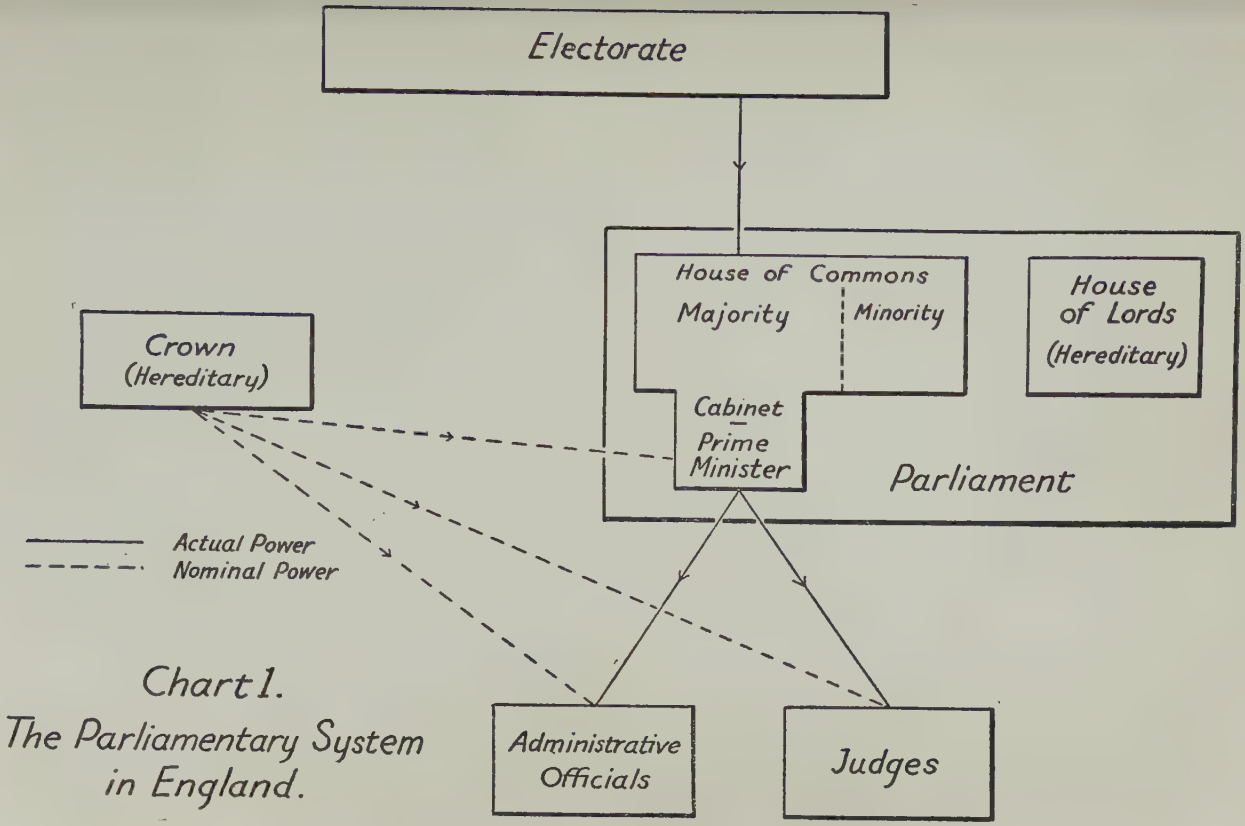

Chart 1.
The Parliamentary System in England.

independence and power. But one should not get the impression that the kingship or presidency in a parliamentary country is merely an empty title. The position is one of great honor and dignity in which the incumbent may, if he has the appropriate character, exercise a tremendous moral influence. But when he oversteps the sphere assigned to him and attempts to play an active and direct part in the affairs of state, he is likely to meet with severe discipline at the hands of parliament. The most recent case in point is the forced resignation, in June, 1924, of President Millerand of France because he had taken a personal part in politics after his elevation to the presidency.

The real executive head under the parliamentary system is the prime minister, or, to speak more accurately perhaps, the cabinet. There is often doubt in the minds of observers as to whether the final executive responsibility rests upon the prime minister alone or upon the prime minister and cabinet jointly. Technically the responsibility of the cabinet is collective, and the prime minister and cabinet triumph or fall together; but since the prime minister forms the cabinet and selects its members, it might seem that the ultimate and supreme responsibility would fall upon him. The probability is that the actual location of supreme executive authority at any given time depends upon personalities and party alignments in the cabinet, there being cases in which it is clear that the prime minister dominates the cabinet and others in which the cabinet dominates the prime minister.

The most striking fact about the executive under parliamentary government in its continuous political as well as administrative responsibility to parliament. Policies originate with the cabinet, are discussed and acted upon by parliament under cabinet leadership, and are carried out by the permanent civil service under cabinet direction. But despite the fact that it has the initiative in both legislative and executive matters, the cabinet may be overthrown by parliament at any time.

The permanent executive service consists of the thousands of civil servants employed in the various executive departments, who as a rule are appointed on a permanent basis and continue in office regardless of changes in parliament and the cabinet. This bureaucracy carries on the daily routine work of administration under the direction of any cabinet which may happen to be in power, and its members are exempt from removal except for cause, such as dereliction of duty or corruption.

The Judicial System

The judicial system in parliamentary countries consists of a series of courts organized independently of the legislature and the executive. The most conspicuous exception to this rule occurs in England where the House of Lords acting through a judicial committee of four law lords and the lord chancellor, who is a member of the cabinet, serves as the highest court of appeal. The selection of judges in parliamentary countries, though nominally made by the king or president, is in reality in the hands of the prime minister or a member of his cabinet. But it is the rule that judges hold office for life or during good behavior, and hence the personnel of the courts is but little affected by the vicissitudes of politics. There are usually various ways in which legislative and executive officials may be made amenable to judicial processes, but the courts have no authority to set aside acts of other branches of government as contrary to the constitution. Their main function is to adjudicate private controversies, and in this sphere they are exempt from interference by the legislative and executive organs.

Political Parties

Parliamentary government is essentially party government. The party in power is the government for the time being. With a majority in the legislature, it can dominate both legislative and executive organs of government and thus can develop and carry out its policies with utmost freedom. Under the two-party system which prevailed in England before the great war, the cabinet consisted of the chosen leader of the majority party and his principal lieutenants; and as long as this group of political leaders could retain the confidence of parliament and the country, they were able to remain in office and direct the legislative and executive business of the government. The minority party was forced into the rôle of a vigilant and unrelenting critic, striving always to unseat the cabinet and drive it out of office. So parliament became the great arena of party conflict, and all important issues were fought out in parliament under responsible party leadership.

When there are three or more parties, as in all the continental European countries and now in England, the parliamentary system does not so readily lend itself to responsible party government. No single party, as a rule, can obtain a clear majority in parliament, and

this means that cabinets must be formed by combinations, coalitions, and alliances among two or more parties. These so-called *blocs* are necessarily instable and without any fundamental agreement as to principle or program, and the cabinets formed by them are often characterized by the meanest sort of vacillation and time-serving. Instead of clear and undivided party responsibility, there is confusion, evasion, and irresponsibility.

Advantages and Disadvantages of Parliamentary Government

The principal advantages claimed for the parliamentary system are: (1) that it produces harmonious coöperation between the legislative and executive organs of government and thus makes for prompt, expeditious, and efficacious action in dealing with public questions; (2) that it centers responsibility and power upon a small group of conspicuous political leaders who are put in position where they can be easily held accountable for all their acts of omission and commission; (3) that it is flexible and thus readily adaptable to changing conditions and circumstances.

On the other hand, the leading objections urged against the parliamentary system are: (1) that it gives to a single party, temporarily in power, undue latitude in shaping policies of state whose effects may be felt for many years after that party has gone out of office; (2) that it results in instability and lack of continuity of policy, particularly under the multi-party system; (3) that it fosters and stimulates demagogism; (4) that it breaks down under the stress of great emergencies, such as war.

Recent Deviations From Strict Parliamentary Type

Several of the new constitutions of Europe, while adhering in the main to the parliamentary type of government, have introduced innovations designed to correct certain of the alleged weaknesses of that system. Most of these deviations from the orthodox parliamentary pattern have to do with the relation between the legislature and the executive. In Czechoslovakia, for example, the president is given an unusual degree of independence and authority. He may veto acts of parliament, dissolve parliament, recommend measures to the consideration of parliament, appoint and dismiss cabinet ministers, appoint various classes of civil servants, grant pardons, act as commander-in-chief of the armed forces of the republic, be present at and preside over meetings of the cabinet, and call the cabinet into

conference. At the same time it is explicitly provided that the cabinet shall be responsible to the chamber of deputies and shall be obliged to resign upon failure to receive a vote of confidence in that body. Under the new German constitution also the president has been given a position of considerable independence and in-

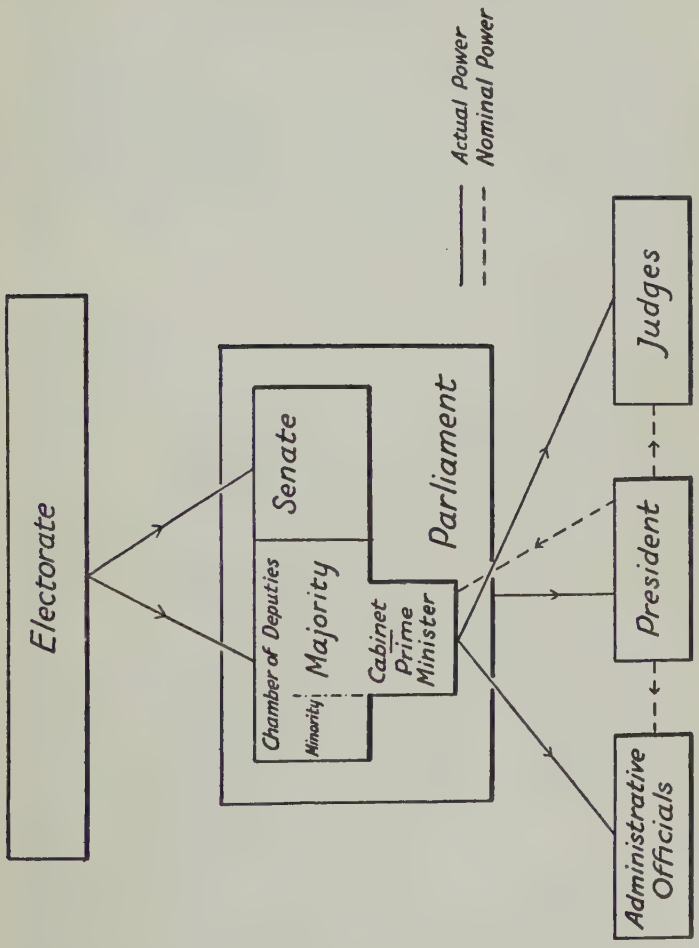

Chart 2. The Parliamentary System in France.[1]

fluence, though his special prerogatives are by no means as extensive as in Czechoslovakia. He has no veto power, but he may order a referendum on laws passed by the legislature, and also upon measures with reference to which there is disagreement between the two

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houses. He has the right to dissolve the Reichstag, and he is given exceptional powers in times of public emergency.

Various other innovations, though less drastic than the foregoing, have appeared in several other recent constitutions. Whether these new lines of departure in parliamentary government foreshadow the eventual development of one or more new types of government, it is impossible at present to say. But though we must for the moment suspend judgment, there is no sound reason why we should not anticipate the rise of new forms of government. The parliamentary system, like all others, has been forged in fires kindled by various concatenations of social forces in the past. There is nothing necessarily final about it, and it is altogether probable that it will be refashioned and remade in quite the same way that it was originally brought into being.

CHAPTER XII

THE CHECK-AND-BALANCE SYSTEM

Although the United States was the first modern state to put the check-and-balance plan of government into actual operation, the system of thought upon which the plan is based far antedates American history. The idea of a threefold division of governmental powers and a correspondingly tripartite organization of governmental machinery was not unfamiliar to the ancients. It was set forth at various times by Aristotle, Cicero, Polybius, and other political writers of antiquity, but it did not have any great influence upon the actual organization of government in ancient times. Throughout the Middle Ages it was almost completely lost to view, but it was gradually revived and at the time of the Puritan Revolution in England became a very potent factor in the arena of practical politics. The Eighteenth and Nineteenth Centuries saw the trinitarian conception of governmental organization attain its greatest popularity. The writings of such philosophers as Locke and Blackstone in England and Montesquieu in France, who were proponents of the trinitarian view, came to be the political gospel of leaders in France and America during the revolutionary epoch.

The unhappy experiences of the American colonists with their royal governors, whose prerogatives included very extensive legislative, executive, and judicial powers and who were not subject to colonial control, and the long and bitter conflict which had had the result of setting the colonial assemblies in definite opposition to the governor, had fully prepared the American mind for the reception of the idea that free government is impossible where legislative, executive, and judicial powers, or any considerable portion of them, are united in one organ of government. The men who met in Philadelphia in 1787 to frame a new constitution for the United States were interested not only in the maintenance of free government but also in devising a scheme of government which would preserve what seemed to them a safe and proper balance between the antagonistic social classes of the day. Considering their memorable experiences in the struggle against their colonial governors and the instability and in-

competence shown by legislative assemblies of the revolutionary and post-revolutionary period, it was not unnatural that these men should be convinced that the solution of their problem was to be found in the familiar doctrines of Locke, Blackstone, and Montesquieu. Various state constitutions had already applied these principles to a certain extent, thus paving the way for their incorporation in the new national constitution. This constitution, which went into effect in 1789, at once became and has since remained the world's most prominent example of the check-and-balance system of government. This system has now been adopted by all of the states of the American Union, by most of the countries of Latin America, and by large numbers of American municipalities, but it has been unable to gain a permanent foothold outside of the western hemisphere.

The Doctrine of Separation of Powers

The doctrine of separation of powers is the philosophic cornerstone of the check-and-balance system. According to Montesquieu's famous book, *The Spirit of Laws,* there are three sorts of governmental power—legislative, executive, and judicial. When any two or more of these are united in the same person or the same body of magistrates, there can be no liberty; for it is impossible to prevent one person or one body of persons having at the same time the functions of law-maker, law-enforcer, and judge from acting capriciously, arbitrarily, and oppressively. But if these three functions are separated and each is bestowed upon a different person or set of persons, no single person or group of persons will have power enough to violate the rights of the people, and it will be next to impossible for the three to concert together for such a purpose. It will also be very difficult for any one social class or group to obtain simultaneous control of all three kinds of governmental power, and without so doing it cannot readily use the machinery of government to oppress other classes and groups. Hence Montesquieu argued that there should be three distinct and absolutely coördinate organs of government—legislature, executive, and judiciary; that the legislature should exercise all legislative powers, the executive all executive powers, and the judiciary all judicial powers; and that no given person or groups of persons should exercise more than one kind of power.

The fallacies of the theory of separation of powers have been the subject of many learned dissertations. It is contended, and most

modern authorities agree, that the powers of government are not of three kinds, but two—political and administrative, the former embracing all activities having to do with the determination of policies and the latter all activities having to do with the execution of policies. Furthermore, it is pointed out that strict and complete separation of powers would result in an utterly unworkable scheme of government. Each of the three organs of government, being within its own sphere a law unto itself, would be disinclined to coöperate properly with the others and would probably use its own powers to checkmate the other departments as far as possible. The outcome would be a perpetual deadlock. This practical objection was so clearly recognized by the framers of the American constitution that they did not even try to introduce the principle of separation of powers in its logical purity. All they did was to attempt to distribute the powers of government among the three separate organs of government in such a way as to give to each the functions it seemed best qualified to perform and at the same time to prevent any one of them from being able to dominate and override the others. It was to accomplish this that they resorted to the scheme of checks and balances.

Checks and Balances

Three absolutely separate and absolutely coördinate organs of government would pull in three different directions instead of pulling together, and each would tend to use its own prerogatives to promote its own peculiar ends and to thwart the actions of the others. To prevent this, in the American system of government, each organ in its own field of action is made subject to certain limitations resulting from powers given to the other organs to impose checks upon it. Thus, for example, the legislature is checked by the executive veto and the power of the courts to declare laws unconstitutional, the executive by the necessity of legislative confirmation of executive appointments and the power of the courts to issue mandatory orders binding upon the executive, and the judiciary by legislative authority over the organization and procedure of the courts and the appointment of judges by the joint action of legislature and executive. Many similar examples could be given. The practical consequence of this arrangement is that each department of government is in a position to exercise certain authority over the other two and in turn is subject to their authority in certain matters pertaining to its own field of action. This system of checks and counterchecks was in-

tended to result in a perfect equipoise or "balance of power" among the three organs of government. They were to be independent and at the same time interdependent; coördinate and at the same time reciprocally correlated; mutually exclusive and at the same time mutually intrusive. This explains why check-and-balance government often seems to be such a confused jumble of contradictions, inconsistencies, and incongruities. It is by far the most complex system of government ever devised, and is often incomprehensible even to the expert.

The Legislature

The constitutional position of the legislature under check-and-balance government is not easy to describe. The legislature is presumed to possess full and complete legislative power, except as restricted by the constitution itself. Owing, however, to the fact that the principle of separation of powers is embodied in the constitution, it is unconstitutional for the legislature to exercise any powers of an executive or judicial nature unless they have been conferred upon the legislature by explicit grant in the constitution. In a rough way it is not difficult to discriminate between legislative, executive, and judicial functions; but when it comes to concrete cases there are scores of governmental activities that virtually defy classification. After dealing with a few such cases one comes to realize that instead of sharply defined boundary lines between the three classes of governmental power there is a debatable border land which is the source of endless doubts as to the propriety of the activities undertaken by the three departments of government and which often precipitates a bitter struggle among them over the question of constitutional prerogatives. American legislatures, for instance, always find themselves beset with uncertainty as to how far they can go in summoning witnesses to testify in legislative investigations and compelling them to testify. Acts of this kind are perilously close to the judicial side of the no-man's-land which lies between legislative and judicial functions, and in controversial cases, such as the Teapot Dome affair or the Daugherty investigation, the right of the legislature to do these things is rarely left unchallenged.

But that is not all. The legislature not only may not exercise powers belonging to another department of government but may not delegate legislative functions to a non-legislative department or agency of government. This rule of constitutional interpretation

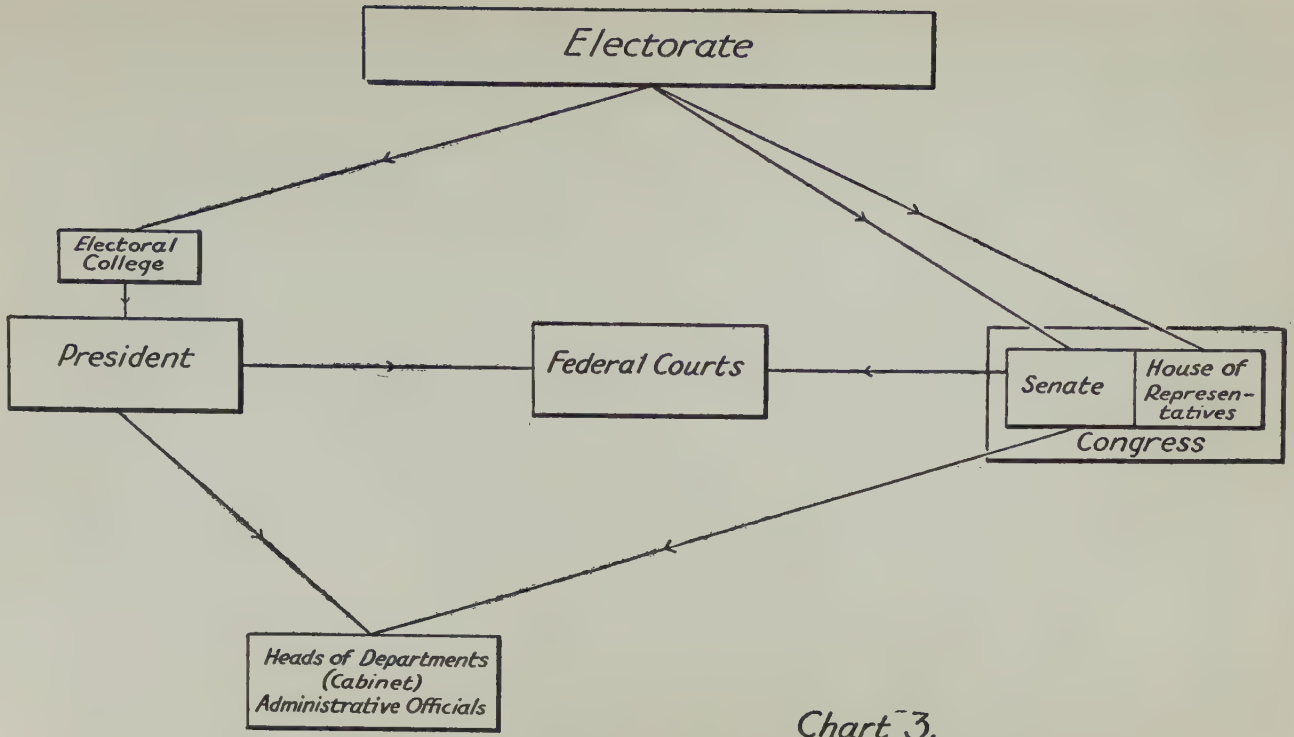

Chart 3.
The Check-and-Balance System in the United States.

has been the cause of much complication and trouble in connection with the establishment of boards and commissions endowed with power to make and enforce their rules and regulations against private citizens. By very nimble legal reasoning the right of the legislature under certain circumstances to create such bodies and endow them with authority that is closely analagous to legislative power, has been sustained; but it is never certain that these precedents will hold in future cases.

In pursuance of the check-and-balance idea the legislature is given a number of powers which enable it to exercise authority over the executive and the judiciary. How far may it go in the exercise of these powers? This is a difficult constitutional question. It has been suggested, for example, that Congress having the power to determine the number of judges constituting the Supreme Court could one by one, as vacancies occur, abolish the judgeships and thereby destroy the court. No one imagines that to be true, but no one knows just how far Congress might go. In the same way it might be supposed that Congress could organize and determine the duties of the executive departments in such a way that they would be independent of the President and possibly responsible to Congress, but the fact is that no one really knows just how far Congress may go in regulating the organization and procedure of the executive establishment.

Without going farther into the constitutional intricacies of the legislature's position, we can readily perceive the contrast between the supreme and controlling legislature of the parliamentary system and the fettered and circumscribed legislature of the check-and-balance system. The question of the constitutional competence of the legislature to do this or that can almost never arise under the parliamentary system, while under the check-and-balance system the constitutional issue is perennial. Legislatures under the check-and-balance plan are "cabined, cribbed, confined"; they must move in a narrow path; if they overstep the boundaries of their limited sphere, their action is invalid. Having no means of directly controlling the execution of policies which they formulate, they strive to reduce the discretion of the executive and judiciary to the minimum by inserting in every piece of legislation provisions relating to every conceivable detail of execution. This practice, while it does not materially increase legislative control of the other branches of government, very seriously impairs their ability to act efficiently and expeditiously.

In respect to legislative organization and structure there are no

generic differences between the parliamentary and check-and-balance systems. Except in municipal government, the bicameral system is almost universal. The basis of representation is generally speaking about the same under the two systems.

The Executive

The independence of the executive under the check-and-balance system contrasts so strikingly with the subordinate character of the executive under most other systems that some authorities prefer to regard this as the most distinctive point of difference, and therefore speak of the check-and-balance system, because of its characteristically strong and independent president, as the presidential system. This, however, is a term of convenience rather than accuracy; it is in reality a misnomer, because it implies that under the check-and-balance system the executive is the paramount organ of government, which is simply not true. Under the check-and-balance system the executive is stronger and more independent than under other systems, but constitutionally the executive is upon a strict parity with the other departments of government. It is true that the executive in the check-and-balance system may under some circumstances impose its will upon the other two branches; but in other situations it must bow to their will completely. President Wilson, for example, was absolutely within his constitutional rights when he chose to negotiate the peace treaty and the covenant of the League of Nations without consulting Congress; but when it came to the ratification of those instruments Mr. Wilson had to submit to the will of the Senate. Europeans were at a loss to understand how this could be. No prime minister could have been as free from legislative control as Mr. Wilson was at Paris or as completely fettered as Mr. Wilson was upon his return to Washington.

The rule in check-and-balance government is that the executive may exercise only such powers as are expressly or by necessary implication conferred upon that department by the constitution. Certain non-executive powers, such as the veto power and the power of pardon, are customarily conferred upon the executive; but aside from powers thus specially conferred, it is unconstitutional for the executive to exercise any functions of a legislative or judicial nature. But because of the shadowy character of the border regions between executive, legislative, and judicial powers, the executive, like the legislature, is perennially involved in constitutional controversies with other departments over disputed points of power.

The chief executive, and the real executive head, under the check-

and-balance system is a president, governor, or mayor, directly or indirectly chosen by the voters, and therefore quite independent of the legislature. He holds office for a definite term of years and not at the will of the legislature, and he may not be disturbed in this tenure of office except by legislative impeachment for serious crimes or misdemeanors, or by direct popular recall. In no sense is the executive head politically responsible to the legislature. The heads of executive departments are sometimes appointed by the chief executive alone, sometimes by the chief executive and legislature acting jointly, and sometimes are elected by dircet vote of the people. Very frequently all three of these methods are used simultaneously. The power of the chief executive to remove subordinate executive officials and to control and direct them in the performance of their duties varies greatly. In the national government of the United States the president's authority over the administrative personnel is far-reaching and but little restricted; but in all of our states and in many of our cities the administrative authority of the executive head is so divided and circumscribed as to be of little consequence.

The organization of the various executive departments and agencies is a legislative function. It is the practice of American legislatures, in order to circumscribe the discretion of the executive as much as possible, to prescribe the set-up and the powers and duties of the various units and offices of the executive establishment in the most minute detail. The result is a rigid and inflexible system of administrative machinery, which can be changed with such great difficulty that it is usually allowed to remain in an archaic condition and which also furnishes occasion for a great deal of contention and litigation. In the executive service many hundreds and thousands of officials and employees are appointed on permanent tenure as a result of civil service examinations to determine their qualifications; but it is still a rule to appoint or elect department heads and important officials on a purely political basis.

The Judiciary

It is only under the check-and-balance system that the judiciary may be considered a separate and independent branch of government. The judicial power, under this system, is differentiated from the executive and legislative functions, and is vested in a department of government having no organic connection with the legislature or

executive. No one may be a judge and at the same time occupy an executive or legislative position. The courts may not exercise executive or legislative powers, nor may judicial functions be exercised by executive or legislative agencies. The business of the courts is to interpret and apply the law to individual cases; and since the judiciary is an independent and coördinate branch of government, there is no way that judicial decisions can be bent to the will of the legislature or the executive. In effect this means that the courts have the last word; for whatever the courts say a law means, it must mean, there being no authority to gainsay them. Therefore, in all questions of disputed authority the courts act as umpire; and curiously enough, they not only adjudicate between the legislature and executive, but also between those two branches of government and themselves.

In interpreting the constitution the courts are in an exceptionally strong position. When they are called upon in a case involving private rights to apply a statute which they consider to be contrary to the constitution, they may declare the statute null and void and refuse to enforce it. Inasmuch as there is no way of getting a law enforced against private individuals except through the courts and inasmuch as the courts constitute an independent and coördinate branch of government, the other branches of government are practically obliged to accept the decisions of the courts on constitutional questions. The only other alternative would be for the executive to refuse to carry out the decisions of the courts and for the legislature and executive to combine to change the organization and personnel of the courts. But this would mean the end of the check-and-balance system, if not the end of constitutional government. This advantageous position has enabled the courts in the United States to establish beyond any question their right to overthrow acts of the legislature which they believe to be inconsistent with the constitution. For that reason some are inclined to say that our constitutional equilibrium has broken down, and that our government is now characterized by judicial supremacy.

The organization and procedure of the courts may be minutely prescribed by the constitution, or may be left largely to legislative action. In either case the judges are always placed in an independent position. In most of the American states and cities the judges are elected by popular vote; and in the national government and the few states where they are appointed by action of one or both of the other branches of government, they are given long terms of office

and are exempt from removal except on the most serious criminal charges, so that they feel practically no dependence upon the other branches of government.

The Party System

One of the reasons that the framers of the American constitution were so strongly attracted to the check-and-balance idea was their conviction that it would make party government impossible. It seemed to them hardly within the realm of possibility that a single political party would at any given time be able to dominate all three or even any two of the three branches of government. Time has proved that they were much mistaken in this belief; and many students of American government declare that our constitution could not possibly have endured more than a few years if the expectations of the fathers with reference to party government had been realized. Nevertheless, it is true that the check-and-balance arrangement does render party control much more difficult than the parliamentary system, and forces the party system to develop along much different lines. A political party seeking to get control of the government under the check-and-balance system must find some means of placing its adherents in a dominant position in the legislature and executive, and sometimes in the judiciary. Since these departments are independent of one another and their incumbents are chosen by different methods, this is not to be achieved by the simple expedient of getting a majority in the legislature. An elaborate and permanent system of party organization entirely apart from the regular machinery of government must be established and maintained for this purpose.

Party conflict is not centered in the legislature, as under the parliamentary system, but involves all three branches or organs of government. Party leadership is divided between the executive and legislative branches of government; and even though the chief executive is of the same party as the majority of the legislature, there is usually something of a struggle to determine which shall have the decisive voice in the determination of party policies. When the executive head is of one party and the legislative majority of another, as not infrequently happens, there can be no party government at all in the European sense; for neither party is able to govern, but only able to prevent the other from doing so. Under such conditions the party conflict degenerates into a deadlock which

eventuates into a contemptible sort of guerilla warfare. Issues cannot be fought out and settled, and principles are largely obscured by the personal character of the struggle. To maintain party solidarity under such conditions it is necessary to have a large body of permanent workers whose loyalty is based on personal interest, and for that reason the distribution of the patronage plays an undue part in party affairs. The party organization tends to crystallize into a machine for winning elections and distributing jobs.

Advantages and Disadvantages

The chief advantage claimed for the check-and-balance system is that it avoids extremes and makes for stability and conservatism in the process of government. It is rarely possible for all three departments of government to be dominated by one interest, group, or class, or to be completely carried away by a single sweeping tide of public sentiment. Minorities are able to exercise great influence—some think undue influence—at every stage in the governmental process. The check-and-balance system also provides a strong, vigorous, and independent executive whose tenure and authority do not depend upon a precarious legislative majority, and which is therefore capable of energetic and decisive action in emergencies. The exceptional independence of the judiciary and particularly the power of the courts to declare laws unconstitutional is considered by many to be the best feature of the check-and-balance system, because it is believed that the judiciary thus acts as a balance wheel to steady and coördinate the whole governmental machine.

The objections urged against the check-and-balance system are numerous. It is claimed that it is slow and cumbersome in operation, and is characterized by frequent deadlocks. It is asserted that the check-and-balance system enables irresponsible minorities to thwart and defeat the expressed will of the great mass of people, not occasionally but regularly and almost inevitably. It is also contended that the check-and-balance system is rigid, inflexible, and not easily adapted to meet the problems created by ever-changing social and economic conditions. It is sometimes said that the check-and-balance system tends to bring to the surface and to accentuate all that is bad in political parties, and to make it impossible for them to perform the great services to which they should be devoted.

CHAPTER XIII

THE SWISS, RUSSIAN, AND OTHER SYSTEMS

The great majority of contemporary governments, despite numerous idiosyncrasies and variations from type, may be said to belong either to the parliamentary type or the check-and-balance type. There are, however, a few systems of government which stand clearly apart from these two general types, and in order to have an adequate comprehension of the character of governmental institutions throughout the world it is necessary to give some attention to these anomalous forms of government. The most prominent of these are the Swiss and Russian systems, but the governments of the Far East and certain modern dictatorships also merit some consideration.

The Swiss System

The features which distinguish the Swiss plan of government, in both its general and local units, are the plural or collegial executive and the unique relation between the legislature and the executive. The Swiss do not in any of their governmental divisions vest the supreme executive authority in one person. They have no chief magistrates corresponding to the American president, governor, and mayor, or to the English king, prime minister, and mayor. Supreme executive authority in Switzerland is always reposed in an executive committee or council, which functions as a body in the exercise of general executive powers and whose members individually act as heads of the several executive departments. This executive council has a chairman or president who, though he has certain ceremonial prerogatives, is in point of power on absolutely the same level as his colleagues. He is merely the presiding officer at their meetings.

The relations of this executive council with the legislature are most unusual. The members of the executive council are chosen by the legislature for definite terms of office; but they are not members of the legislature, like the cabinet ministers in England, do not assume any functions of political leadership in the legislature, and are not obliged to resign when they find themselves unsupported

by a majority in the legislature. On the other hand, the executive council is not independent of the legislature and coördinate with it, like the executive under the check-and-balance plan. It has no veto power, no independent ordinance power, and, in fact, no power in the exercise of which it is not subject to the control of the legislature. The executive council may suggest and recommend legislation, but is not responsible for so doing; its members may appear in the

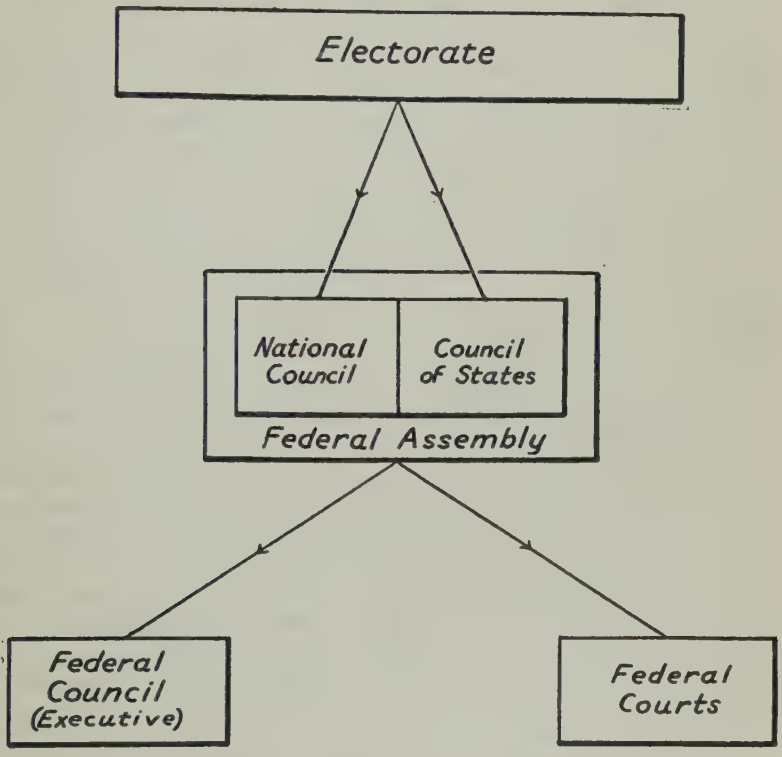

Chart 4. The Swiss System of Government

legislature and join in debate, but may not vote; indeed it may even draft bills to be introduced in the legislature. In all this, however, it acts more in an advisory and technical capacity than in a political capacity. If it is overruled by the legislature, as not infrequently happens, it accepts the decision of the legislature and executes it as faithfully as it would have done with its own proposal if that had been accepted by the legislature. There is consequently no reason

why it should be called upon to resign because of a reverse in the legislature. It is at all times completely the servant of the legislature, though not politically responsible to that body.

To sum up, it might be said that the Swiss executive is a permanent, or relatively permanent, staff of executive officials attached to the legislature. In that capacity it is the business of the executive to render advice, counsel, and assistance in legislative matters, to manage and direct the business of administration, and in certain matters, such as foreign relations, to serve as the mouthpiece of the government. Nothing exactly like this is to be found in any other country, although the English system of municipal government and the city manager plan in the United States are somewhat analogous in principle to the Swiss system. The municipal council in England chooses a number of permanent executive officials to carry on the work of administration under its direction, but these are not joined together to form a distinct and separate organ of government. The city council under the manager plan in this country chooses a professional chief executive, the city manager, and vests sole executive authority in him and subordinates chosen by him.

Of the other features of the Swiss system of government, the only one that is in any measure distinctive is the right of the people to participate directly in legislation through the initiative and referendum. These devices have spread to the United States and other countries, and will be discussed at another point in this volume. The general structure and procedure of legislative bodies in Switzerland are not fundamentally dissimilar to those noted in other systems of government. The judiciary in Switzerland is separate from the other organs of government, but does not occupy a coördinate relationship. The judges are chosen either by the legislature or by direct popular vote, but the courts have no power to declare laws unconstitutional or to define the prerogatives of other branches of government.

The Russian System

The Russian soviet system of government is for most persons a symbol of communism, revolution, and proletarian dictatorship; and because of the unpopularity of these things in western countries, people have been inclined to shut their eyes to the interesting and significant features of the soviet system. Communism and sovietism are not one and the same thing, and there is a possibility that the latter will survive long after the former has become a delirious memory.

The word "soviet" is the Russian equivalent for council or committee, and is by no means new in Russian political terminology. The first revolutionary soviets appeared in connection with the Russian revolution of 1905, when they served as executive committees to direct the activities of striking workmen. With the suppression of this uprising they promptly disappeared and were not again heard of until the revolution of 1917. Upon the overthrow of the imperial régime in 1917 soviets of workmen and soldiers were formed in Petrograd (now Leningrad), Moscow, and other cities to serve as unofficial vigilance committees to forestall any attempts at counter-revolution. Although these bodies were unofficial and extra-legal, they were of much service to the provisional government as long as they remained under the influence of the moderate socialists (Mensheviki). Lenin, Trotsky, and other leaders of the extreme socialists (Bolsheviki) were quick to perceive the political possibilities of the soviets and soon succeeded in attaching the soviets to their standard. Then, making use of the power of the soviets, they overthrew the tottering Kerensky government, proclaimed the dictatorship of the proletariat, introduced communism, and established the Russian Socialist Federated Soviet Republic.

The first thing about the soviet system that distinguishes it from all other systems of government is that the basis of representation is occupational rather than territorial or numerical. The primary and fundamental units of government are the urban and rural soviets of soldiers, workers, and peasants. These local soviets are formed in the various urban and rural communities by bodies of workers in factories, soldiers in the barracks, and peasants in rural villages. Each local soviet has authority within a given area and chooses representatives to the different county, regional, and provincial soviets, and to the All-Russian Congress of Soviets, which is the supreme governing body of the republic. Thus upon the broad foundation of local soviets, or occupational groups, is erected a complex pyramid of representative soviets culminating in the national congress of soviets. Since the republic is, nominally at least, a federal government, the interrelations of the various provincial and regional soviets are too complex for discussion in a brief treatment of this character. What we should particularly remember is that the All-Russian Congress of Soviets, the national governing body, is a great assembly made up of delegates chosen to represent various local, regional, and provincial soviets, which in turn are made up of delegates selected not by the people in mass but by definite occupa-

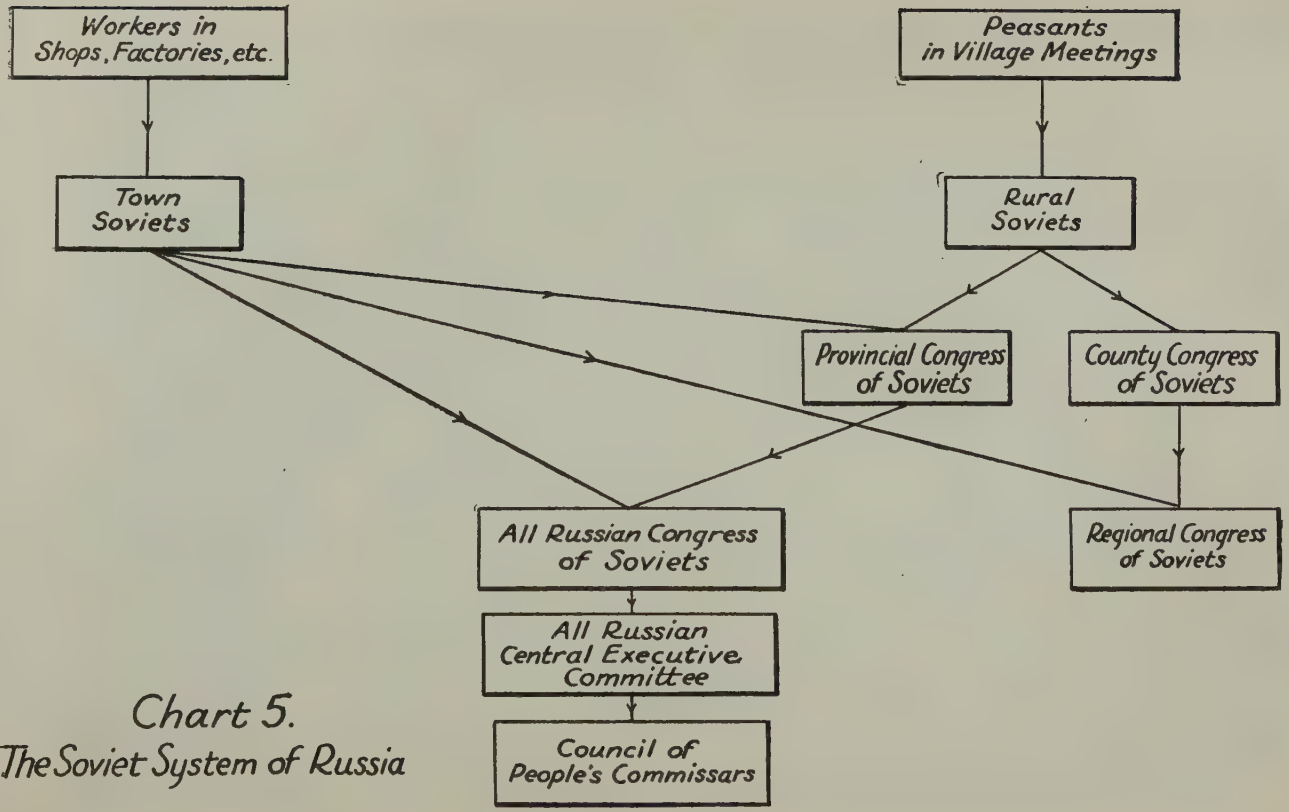

Chart 5.
The Soviet System of Russia

tional groups of industrial workers, agricultural workers, and soldiers. It is noteworthy also that the scheme of representation is such as to discriminate against the peasants and rural soviets; they being entitled to one delegate in the All-Russian Congress for 125,000 voters, while the urban soviets are entitled to one delegate for each 25,000 voters. The suffrage is so restricted as to exclude from the right to vote all persons connected with the old régime, all the clergy, all private merchants and capitalists, all persons who employ hired labor, and all persons who enjoy an income from property or invested capital.

The All-Russian Congress of Soviets meets twice a year, or oftener upon special call. It is a very large and unwieldy assembly, and it has no specific functions except the election of the All-Russian Central Executive Committee, which is declared to be the supreme legislative, executive, and controlling organ of the republic. This latter body, which consists of not more than 200 persons, directs and controls in a general way all the activities of the government; but its most important function is the selection of the Council of People's Commissars, which is the real controlling, directing, and managing body of the government. The Council of People's Commissars is composed of seventeen members. As a body it has most extensive legislative, executive, and judicial powers. Its orders and resolutions may be suspended or revoked by the All-Russian Central Executive Committee, but this is not a matter of frequent occurrence. Each commissar is the head of an executive department, but has associated with him in an advisory capacity two other persons appointed by the Council of People's Commissars.

Without going into further detail it is clear that the Russian system has no counterpart among contemporary governments. It makes no distinction in organic structure between legislative, executive, or judicial functions. The Council of People's Commissars, which is the crowning feature of the edifice, is not a legislature, nor an executive committee, nor a court; it is all three in one. It is in reality a super-soviet, and, being that, it is in the larger sphere just what the local soviet is in the smaller sphere—a directorate performing every imaginable sort of governmental function. The responsibility of the Council of People's Commissars to the All-Russian Central Executive Committee, of the latter to the All-Russian Congress of Soviets, and of the All-Russian Congress to its constituent soviets is more imaginary than real. The fact is that with the present suffrage and election arrangements the complicated hierarchy of soviets composing the Russian system is dom-

inated by the Communist party, the leading members of which have installed themselves in the Council of People's Commissars and from that eminence wield dictatorial authority over the Russian Republic. But the present perversion of the soviet system by the Communist faction should not be taken as proof that the soviet plan will vanish when communism goes. There is much in the soviet scheme which fits well with Russian political psychology and with the social and economic conditions of Russian life. It is not impossible, therefore, nor even wholly improbable, that Russia will work out her political destiny by building on the soviet idea.

Governments of the Far East

There are only two governments in the Far East that require particular notice—those of Japan and China. The government of Japan still bears many of the characteristics of a feudal monarchy. The supreme power of the state is vested in the emperor and is exercised through a cabinet or council of ministers appointed by the emperor and responsible to him alone. At one time there stood between the emperor and the cabinet an unofficial group of "elder statesmen" whose decisions were practically final on all important questions. The original members of this group have now passed away, and no successors have arisen. The national legislature of Japan is a bicameral body. The upper house consists of the hereditary nobility and certain non-titled persons of very great eminence. The lower house consists for the most part of elected members, but the basis of representation has not been made fully democratic. The power and influence of the legislature are growing, but it cannot yet be regarded as the controlling organ of government. The Japanese government is now in process of transition from autocracy to democracy, and therefore nothing can be regarded as fixed and permanent. Any person interested in the process by which political authority is transferred from the few to the many will find in Japan a splendid laboratory.[1]

China is politically in a complete state of flux. Since the revolution of 1911 China has been nominally a republic of the parliamentary type; but the fact is that parliamentary government has never functioned in China. The real power of government has fallen into the hands of rival military governors or war lords who maintain themselves by mercenary troops. The history of China since 1911

[1] Since these lines were written the Japanese Diet has passed a bill granting the suffrage to all male citizens 25 years of age or over.

has been largely a story of the efforts of various military governors to dominate the official régime at Peking and of the resultant intrigues and civil disturbances.

Contemporary Dictatorships

There are at present a number of countries in which the normal processes of government have broken down under the pressure of contending factions, and one faction by the use of force has established a military dictatorship. This condition is almost chronic in some of the Latin American Republics, and since the war in Europe dictatorships have been established in Hungary, Italy, Turkey, and Spain as well as Russia. As a general thing the external form and the formal operations of the government are not changed by the dictatorship, but all organs of government are made to mark time at the command of the dictator and his military cohorts. It is impossible to regard a dictatorship as a permanent institution, because if it does not decline through internal differences and weakness in the dominant faction, it will in the long run be forced to compromise with its rivals in order to avoid being overthrown in the same way that it was established.

CHAPTER XIV

UNITARY AND FEDERAL GOVERNMENT

When the authority of government extends over a large area it is next to impossible for the work of government to be entirely carried on at a single point, or capital, or to be wholly managed, directed, and controlled from such a point. For this practical reason, if for no other, every government of any geographical extent must be broken up into a number of territorial subdivisions, each of which must have a separate organization for carrying on the governmental activities which peculiarly concern that locality. This line of cleavage between central and local government is universal; and the basis upon which the division of authority and function between central and local government is made gives rise to two radically different types of governmental structure, known as unitary government and federal government.

Unitary Government

When local government is entirely the creature of the central government and all powers of local government are based upon purely voluntary grants by the central government, we have what is called unitary government. Under this scheme the central governing authority—parliament, monarch, soviet, or what not—establishes all the basic units of local government, such as states, provinces, counties, and municipalities; defines and determines the scope of their powers and functions; and modifies or abolishes any or all of these arrangements at will. The central government is supreme and the local units are its playthings. This system prevails in England, France, Italy, Spain, Belgium, Japan, and many other countries.

Federal Government

When both the central government and the basic units of local government—states, provinces, and the like—are established by a constitution which so divides the powers of government that the

central government has a definite sphere of authority in its own right and the local governments likewise have a sphere of authority which belongs exclusively to them, we have what is known as federal government. Under this system the structure, powers, and functions of both central and local government are determined by the constitution, and neither may encroach upon the domain of the other and neither is dependent upon the other for authority to act within its own domain. This system prevails in the United States, Germany, Switzerland, Canada, Australia, and a great many other countries where states, provinces, or whatever they may be termed, are autonomous units of government moving in an orbit whose limits have been defined by the constitution, and the central government is likewise an autonomous government moving in a different but similarly circumscribed orbit.

Problems of Federal Government

Unitary government gives rise to very few constitutional difficulties and problems, because the all-powerful central government completely dominates the local units and has unlimited discretion to make any changes or adjustments it may deem expedient. But federal government sets up a permanent division of authority between central and local government which leaves neither in a position to dominate the other and very often leaves so much doubt as to the precise limits of the authority of each that there is endless conflict and controversy over disputed points of constitutional authority.

The first great problem in federal government is, What should be the basis of the division of power between central and local government? In this question there are two diametrically opposite points of view, which are well represented by the American and Canadian federal systems. The principle followed in the United States is that the constitution should operate as a grant of power to the central government and as a reservation of power to the states. Very early in our history it was held that the national government could exercise only such powers as were expressly or by necessary implication delegated to it by the constitution, while the states could exercise all powers not expressly or by necessary implication taken away from them. This principle of distribution has been severely condemned by critics in other countries, who have declared it to be the chief cause of the long and bitter conflict over the question of sovereignty which culminated in the Civil War and of the almost endless litigation which has gone on since that time. At the time

of the formation of the Dominion of Canada in 1867 Mr. John A. McDonald, who has been called the father of the Canadian constitution, made a speech in the legislature of the United Provinces in which he issued a solemn warning against following the American example. In part he said:

> The fatal error which they [the United States] have committed, and it was perhaps unavoidable from the state of the American colonies at the time of the Revolution, was in making each state a distinct sovereignty. The fatal error was in giving to each state distinct sovereign power, except in those instances where powers were specifically reserved by the constitution and conferred upon the general government. The true principle of confederation lies in giving the general government all the principles and power of sovereignty, and in the provision that the subordinate or individual states should have no powers but those expressly bestowed upon them. We should have a powerful central government, a powerful central legislature, and a powerful decentralized system of minor legislatures for local purposes.

Following the principles laid down by Mr. McDonald, the British North America Act, which established the Canadian federal system, provided that the central government should have power to "make laws for the peace and order and good government of Canada, in relation to all matters not coming within that class of subjects by this act exclusively assigned to the state legislatures". The Swiss federal constitution follows the American principle of distribution, but most of the more recent federal constitutions lean more toward the Canadian plan. The purpose of the federal distribution of powers is, or should be, to create a central government with ample authority to deal with all matters of national importance and to undertake all those activities which can be carried on more efficiently by national than by local action; and at the same time to create a group of states endowed with ample and exclusive authority over matters that are primarily of local concern and which can be handled more efficiently by local than by general action. But national matters are always regarded as more vital than local matters, and for that reason the Canadian idea seems to appeal more strongly to modern federalists than does the American idea.

The second great problem of federalism is how to settle the controversies which will inevitably arise between the states and the national government under both of the aforementioned plans of distributing power. The American constitution does not specifically provide any means of adjudication, and it was not until after the Civil War that it was conclusively settled that the national government acting through the Supreme Court is the final authority in all

questions of controversy over the distribution of powers between the states and the nation. The Canadian system does not leave much room for doubt on this point, for the Dominion parliament has authority to disallow any act of a provincial legislature which in its judgment violates the federal distribution of powers. In Switzerland both the federal legislature and the federal supreme court may overthrow acts of cantonal legislatures on the ground that they are contrary to the federal division of powers. The German constitution provides that national laws shall be superior to state laws, and that if any doubt arises as to the compatibility of national and state law the question shall be referred to the superior judicial tribunals of the central government.

The third great problem in federalism is how to bring about the progressive readjustment of the scheme of federal distribution of powers so as to keep pace with the ever-changing character of political life. In several countries, and particularly in the United States, the federal distribution of powers was made so long ago that it is now archaic in many respects. Powers and functions which a century ago or a half-century ago seemed to be of purely local significance have now, because of the sweeping changes in the social and economic life of the world, taken on the utmost national significance. How, then, can the federal distribution be revised so as to conform to the needs and conditions of the present day? In most federal governments this can only be accomplished by amending the constitution. In the United States the process of amending the constitution is so slow and difficult that it has not been possible to modify the federal distribution of powers very materially in this way. In this country, however, the courts by reason of their power to declare legislative acts unconstitutional are able to expand and modify the constitution very greatly, and any one who will take the pains to study the decisions of the Supreme Court will find that throughout the years there has been a very marked tendency to curtail the powers of the states and to enlarge the powers of the national government.

Advantages and Disadvantages

In favor of unitary government the following points are urged:

1. That it is simpler and less expensive than federal government.
2. That it admits of more energetic and comprehensive action in dealing with any particular problem than does the federal system.
3. That it facilitates the management of foreign relations.

4. That it results in a degree of uniformity in law and administrative procedure that are indispensable to efficiency and are impossible under the federal system.

Against unitary government the following points are made:

1. That it stifles local initiative and thus discourages democratic self-government.

2. That it results in a highly centralized bureaucracy which is not sensitive to the desires and needs of the people.

3. That it tends to inject local issues into national politics.

4. That it does not work well in a large country where it is impossible or undesirable to mold all political processes according to one pattern.

In favor of federal government the chief arguments are:

1. That it enables small communities to maintain their individuality and at the same time unite for common action with reference to matters of general concern.

2. That local autonomy makes for experimentation and innovation which are conducive to progress.

3. That it simplifies the problem of governing large areas.

4. That it prevents the rise of a bureaucracy and makes it impossible for a corrupt ruler or faction to get control of the central government to corrupt the governmental machinery of the entire country.

Against the federal system the usual arguments are:

1. That it is so complex that it places an almost impossible burden upon the citizen.

2. That it is unwieldy and inefficient in dealing with large and difficult problems.

3. That it results in duplication and over-elaboration of governmental machinery, and is therefore unduly expensive.

4. That it increases the difficulty of maintaining a consistent foreign policy.

It should be stated in conclusion that unitary and federal governments have not been adopted in different countries as a result of a careful weighing of their respective advantages and disadvantages, but because of special economic, geographical, or historical circumstances which have led to one result or the other.

CHAPTER XV

THE AMERICAN FEDERAL PLAN

We are often impatient with immigrants from foreign countries who do not quickly and easily understand our system of government, and we are sometimes inclined to attribute their misconceptions and misinterpretations of our institutions to gross stupidity or perverse unwillingness to learn. But we are generally quite wrong in assuming such an attitude. Not only are we unfair to the foreigner, but we betray a vast innocence of the scantiness of our own knowledge of the real character and operation of our system of government. If every native-born American had to pass an examination in American government as a condition of admission to citizenship, as does the foreigner, there would be a shocking disclosure of well-nigh universal ignorance and misapprehension of the true nature and working of our system of government. This is an unpleasant fact; but there are extenuating circumstances. The fact of the matter is that the American system of government is one of the most intricate and complex on earth; and it therefore requires a great deal more information and a great deal more mental effort to understand our system of government than almost any other. Compared to the elaborate and highly involved scheme of government which we have in this country, the governments of such countries as Great Britain, France, and Italy are simplicity exemplified. The only governments which approach ours in complexity are the federal systems of such countries as Germany, Switzerland, and Russia, and even they have avoided many of the complicating features embodied in our system.

To understand the government of the United States it is necessary to know how it came to be so complex and intricate, to know what fundamental principles have been wrought into it, and to know something of the peculiar difficulties arising in connection with the operation of those principles. It is proposed, therefore, in this chapter to deal briefly with the history and the fundamental principles of the American system of government.

I. THE HISTORY OF THE CONSTITUTION

Government in America Before the Revolution

Before the War of Independence separated us from Great Britain, government in America was merely an extension of the English system of government. In the course of some two centuries of English colonization and empire-building in North America there had grown up along the Atlantic Coast thirteen English colonies. These were in no way united among themselves, except that they were subject in common to the control of the Mother Country. Each had its own system of government, and although each had its peculiarities, they were all more or less closely modeled after English political institutions.

In each colony there was a governor, who in all but a few cases was the appointee and agent of the British Crown in the colony. There were two colonies in which the colonial legislature had the right to choose the governor, and there were two others in which the governor was chosen by a proprietor, as for example William Penn and Lord Baltimore, holding under grant of the Crown. There was also a legislative body in every colony. In most cases this body consisted of two branches, the lower composed of members elected by the qualified voters and the upper house composed of persons selected by the governor. The privilege of voting for members of the lower house was generally confined to substantial property owners or taxpayers, and sometimes also to members of the established church. This was in close imitation of the rule of the Mother Country confining the privilege of voting to the aristocracy. Each colony had also a system of judicial tribunals patterned after the judicial system of the Mother Country. With very few exceptions judges and justices were appointed by the governor.

Local government was less uniform, but was nevertheless cast in the English mold. In New England, the town or township was the principal unit of local government, while in the middle and southern colonies the county served as the basic local government unit. The characteristic feature of town government was an annual meeting of all the qualified voters of the town to levy taxes, vote appropriations, adopt various by-laws, and elect a board of selectmen, a constable, a town clerk, and other officials to serve the town for the ensuing year. County government was carried on by such officials as the sheriff, the coroner, the clerk of the court, and the jus-

tices of the peace, who were generally appointed by the governor. There being only a few cities, municipal government was little developed. Altogether there were about twenty incorporated municipalities in the thirteen colonies at the time of the Revolution. The English borough was the prototype of the colonial municipality. The governing body was a common council consisting of the mayor, the recorder, the councilmen, and the assistants. The mayor and recorder were as a rule appointed by the governor of the colony, while the councilmen and assistants were elected by the voters. These officials sat and acted together as a municipal council, the mayor being the presiding officer and the recorder the law officer.

The Effect of the Revolution Upon Government

The Revolution and the consequent severance of all political connection with Great Britain were bound to have a profound effect upon the political institutions of the colonies, but there was in reality no such complete transformation as is frequently supposed. The colonists were not fundamentally dissatisfied with the political institutions under which they lived; it was the relation they sustained to the Mother Country that caused most of the trouble. Consequently the Revolution was not accompanied by sweeping changes in the structure of government from top to bottom. Local government was hardly affected at all, and except for certain minor changes continued much as before the Revolution.

In regard to the general government of the colony the situation was somewhat different. Two of the colonies, Connecticut and Rhode Island, found it unnecessary to make any changes and continued under the governments established by their colonial charters until 1818 and 1842 respectively. In these two colonies the governor was chosen by the legislature, and it was not therefore necessary for the revolting colonists to drive out the governor and upset the existing institutions in order to obtain control. But in the other colonies the first work of the Revolution was to expel the governor and overthrow the existing government. The governor was under the control of the British Crown and not subject to the people of the colony in any way. The colonial legislature could not legally meet and transact business without his consent; it could enact no legislation without his approval; he appointed all the judges and all county officials; and he was commander-in-chief of the military forces of the colony. In all of the controversies between the colonies and the Mother Country the governor was the spokesman and agent of the

Crown, and by reason of his extensive powers was the chief obstacle encountered by the colonists in the struggle for what they deemed to be their rights. It was therefore inevitable that the Revolution should force the governor out. And when the governor was gone, there was no longer any legal government in the colony.

Temporary governments were at once set up, and when it became evident that permanent separation from the Mother Country must be the result of a successful culmination of the Revolution, steps were taken in each colony to establish a regular and permanent state government. In each colony a constitutional convention was assembled by the revolutionary leaders, and this convention framed and put into effect a constitution for the government of the colony as an independent state. These first state constitutions had one characteristic in common, and that was the thoroughness with which they sheared away all the substantial powers of the governor and transferred them to the legislature. The unhappy experiences of the colonists with their royal governors had excited a profound distrust of executive power and a correspondingly enhanced confidence in legislative assemblies. So under the first state constitutions the governor became a mere figurehead, serving primarily as a titular and ceremonial head of government.

Independent Government

By far the most important change wrought by the Revolution was in the interrelations of the several colonies or states. Prior to the Declaration of Independence, though each was bound by legal ties to the Mother Country, they were in no way bound to one another except through their common allegiance to the British Crown. It would seem therefore that the Declaration of Independence must have had the effect, by cutting the ties which bound the colonies to the Mother Country, of converting each colony into a separate and distinct sovereign state, subject to absolutely no superior power. Let us see what actually happened.

The struggle of the thirteen colonies against the British Government was not carried on as thirteen distinct and different enterprises. It was one enterprise in which all the colonies joined. Long before the Battle of Lexington and even before there was any thought of resistance by force, the champions of colonial rights throughout the thirteen colonies had leagued themselves together in the common cause and had set up organizations whereby they

might coöperate more effectively. Through a vast network of interlocking committees covering all of the colonies, the colonial leaders kept in touch with each other, took counsel together, and worked together in defense of their rights and liberties. In 1774 this machinery was used to convoke the First Continental Congress, which met at Philadelphia to consider and discuss measures for carrying on the struggle and rendering it more effective. Although this body contained delegates from all the colonies, they did not come together as spokesmen of the governments of their respective colonies. It was a voluntary and unofficial gathering of the leaders of the anti-British movement. Upon adjournment it passed a resolution calling for a Second Continental Congress of the same character to meet at Philadelphia in the following year. When this body convened in 1775 the resistance of the colonists had finally culminated in war against the Mother Country. To meet the crisis precipitated by the outbreak of war, the Second Continental Congress was obliged to assume so far as necessary the powers of a national government. It appointed Washington commander-in-chief of the colonial armies, provided for the organization of armies, carried on negotiations with foreign powers, promulgated the Declaration of Independence, and finally assumed responsibility for drafting and submitting to the states the Articles of Confederation, which upon their adoption in 1781 became the first constitution of the United States.

Thus it is seen that the thirteen states never actually sustained to one another the relation of disconnected and independent states. Even before the beginning of hostilities against Great Britain they were engaged in close coöperation. Upon the outbreak of the war they acquiesced in a Union under the headship of the Second Continental Congress. When the Second Continental Congress proclaimed the independence of the colonies the language used was: "We, therefore, representatives of the United States of America, in general congress assembled . . . . . do, in the name and authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be free and independent states . . ." This declaration was not made by the colonies singly, but by the representatives of the "United States of America", and though it did dissolve the union of the colonies with Great Britain, it did not, and was not intended to dissolve the Union they had established among themselves. That Union, informal though it was, continued from 1776 to 1781

when it was regularized by the adoption of the Articles of Confederation as a constitution for the "United States of America" which had declared their independence in 1776.

With perfect accuracy, therefore, we may say that the Union, if it did not precede, was at least coeval with the states. The states were dependencies of Great Britain before the Declaration of Independence, and then were the "United States of America" when they made that declaration. It was in a sense a union based on necessity more than free choice, but it was nevertheless a *union*. This Union was never dissolved; on the contrary it was placed upon a constitutional basis by the adoption of the Articles of Confederation and was perfected and perpetuated by the adoption of the Constitution in 1789. It was a Union which in the nature of things had to be. The situation was such that the states, acting as thirteen disconnected and disassociated governments, could not hope to maintain their independence. They had to unite in order to win their independence, and they had to remain united in order to keep it. The truth, then, would seem to be that none of the original states ever came into the Union, because in a realistic, as distinguished from a purely legalistic, sense no state was ever out of the Union.

The Need of a More Perfect Union

Before the adoption of the Articles of Confederation in 1781, the Union was of a most informal and irregular character. On account of the war it was impossible to devote much thought or attention to constitutional niceties. The Second Continental Congress of necessity continued to act as the central governing organ of the United States, although its path was beset with innumerable difficulties. It had no fixed and definite powers, and no means of effectuating the powers it undertook to exercise, except through the voluntary coöperation of the states. Obviously if the Union was to survive the war, it had to be placed upon a regular and lasting basis. It was for that reason that the Second Continental Congress formulated and presented to the states the Articles of Confederation.

A great deal of unjust criticism has been leveled at the Articles of Confederation. They were undeniably defective in a great many ways, but they represented the best that could be done at the time, and they certainly prepared the way for the adoption of the present Constitution eight years later. One should remember that the Articles of Confederation were a product of the war period in which all conditions of life were abnormal. It was impossible

to realize at that time that the interdependence of the states would be as great and in some respects greater in time of peace than in time of war. Conditions during the colonial period, moreover, had been such as to foster local pride and patriotism rather than a strong national spirit. There were deep and bitter religious differences between the various colonies, and there were also fundamental differences of economic interest and social life. Transport and communication were slow and difficult, and there was necessarily little intercourse among the people of the several colonies. Not even six years of coöperation in a common war could at once wipe out all of these separative forces.

It was therefore inevitable that the national government established by the Articles of Confederation should be weak and impotent. It was given practically none of the powers essential to the maintenance of a strong national government. It could levy no taxes, excises, or imposts, and was dependent upon the states to supply it with revenues for its support. It had no power to control or regulate commerce between the states or with foreign nations. It had no right to coin money or establish a national monetary system. It could not quell domestic disturbances, nor compel the states to abide by treaties negotiated with foreign powers. As a consequence of these and other defects the new government was a failure from the start. It was soon involved in inextricable difficulties both at home and abroad, and for a time it seemed that the Union was destined to disintegrate and disappear.

The Constitutional Convention of 1787

Leading men in all of the states had from the beginning perceived the weaknesses of the Articles of Confederation and recognized that the government under the Articles could not long endure. These men labored incessantly to inaugurate a movement for the establishment of a more perfect Union. In 1786, largely through the influence of George Washington and James Madison, the state of Virginia invited the other states to send delegates to a convention to be held at Annapolis for the purpose of considering the question of import duties and the state of commerce in general. Only five states responded, and the convention was a failure. But Alexander Hamilton, who was one of the delegates, succeeded in getting the convention to adopt a resolution suggesting that the states choose delegates to another convention to be held at Philadelphia in the following year to consider the Articles of Confederation and propose

such changes as might seem expedient to render them workable. This resolution was transmitted to the national Congress and to the several state legislatures. Grasping at this straw, the Congress of the Confederation in February, 1787, passed a resolution requesting the states to send delegates to Philadelphia as proposed by Hamilton, for the purpose of revising the Articles of Confederation. All of the states except Rhode Island responded, and the convention assembled in May, 1787.

It is important to note that this convention had no authority to draft a new constitution. It was explicitly instructed both by the national Congress and the state legislatures, which chose the delegates, to confine itself to revision of the Articles of Confederation. It was also charged to report back to Congress and the several state legislatures any alterations or amendments it might deem necessary, and these were not to become effective until agreed to by Congress and the several states. But the convention contained a group of remarkably strong and able men, who were not to be deterred from their purpose of establishing the national government on a firm foundation by any mere quibbling over points of power. The opportunity was at hand, and it might never come again. So the convention, under the influence of such leaders as Hamilton, Madison, Wilson, and Randolph, proceeded to disregard its instructions by drafting an entirely new constitution, which greatly enlarged the powers of the national government. Believing that the Congress and the state legislatures might not take kindly to the newly proposed constitution, the convention made the recommendation, in transmitting it to Congress, that it should be ratified by conventions in each state specially elected for that purpose, and that when nine states had ratified it should go into effect. Neither Congress nor the state legislatures could well refuse the people a right to vote for delegates to act on the new constitution, so the recommendation of the convention was followed. This gave the men who had been most active in framing the Constitution a chance to return to their respective states and work for the choice of delegates who would approve the proposed Constitution. To this task they devoted themselves with great energy, and many were themselves elected to the ratifying conventions. After a long struggle, covering most of the year 1788, the new Constitution was ratified, and was put into operation on March 4, 1789.

We cannot leave this subject without a few words regarding the personnel of the historic convention of 1787. The majority of the delegates, as is true of all representative gatherings, were mediocre

individuals whose names have long since passed into oblivion. But there was a group of extraordinary leaders whose reputations will endure to the very end of American history. Among the outstanding figures were George Washington, Benjamin Franklin, Alexander Hamilton, James Madison, Robert and Gouverneur Morris, James Wilson, Edmund Randolph, and Charles Pinckney. These men represented a different interest and a different point of view from that represented by Patrick Henry, Samuel Adams, John Hancock, Thomas Jefferson, and other eminent revolutionary leaders who were not members of the convention. The men who met at Philadelphia in 1787, although they were attached to liberty and independence, were profoundly convinced that the rights of private property must be safe-guarded by the creation of a strong and stable government; and some of them were frankly skeptical of the merits of democracy. But the conservative leaders could not have their way entirely. Many of the delegates were strongly opposed to their views, and it was furthermore quite evident that no constitution which departed too widely from generally accepted ideas and conceptions of government could be ratified. It was therefore necessary to compromise on many points, to evade many issues, and omit many things. Only in this way was it possible to produce a constitution that had any chance of ratification.

II. THE NATURE OF THE CONSTITUTION

The Peculiarities of the Constitution

The Constitution of the United States is a monument to the practical political sagacity of its framers. They were inspired by none of the zeal of the doctrinaire political reformer, and they had no thought of trying to frame an ideal constitution. They were trying to meet a practical situation in a practical way, and they placed considerations of practical politics above theoretical perfection. And as a result of this the Constitution is one of the most fascinating political documents in the world. It abounds with those curious incongruities, ambiguities, and omissions that mark the deft hand of the experienced politician. In dealing with some subjects it is profuse with detail, and in dealing with others of equal importance it is strangely brief or silent; in some instances the language is precise and crystal clear, and in other cases it is patently ambiguous; in some places there is an obvious attempt to establish a rigid and unchangeable system for all future time, and

in other places there is an equally obvious willingness to let the future take care of itself.

The explanation of these peculiarities lies in the practical political difficulties with which the convention was confronted, both in its own deliberations and in the country at large. The subjects which are treated fully and clearly are those which were of non-controversial, or very slightly controversial, character—subjects about which there was substantial agreement in the convention or which were thought not likely to arouse antagonism throughout the country. And on the contrary, the subjects which are treated ambiguously, or with significant brevity or silence, are those upon which the convention could not agree or which were thought likely to excite dangerous opposition throughout the country. A great many interesting examples could be cited. The published debates of the convention show that there was practical unanimity among the delegates to the effect that there ought to be a property qualification for voting for members of the House of Representatives. But it was feared that if any specific property qualification should be inserted in the Constitution it would meet with opposition in the states where there might be a different property qualification. So it was astutely provided that persons voting for members of the House of Representatives should have the same qualifications as those voting for the members of the most numerous branch of the state legislature. This satisfied all of the states and at the same time produced a property qualification, because all of the states at that time had such qualifications for voting. Another excellent illustration is the way in which the scope of the judicial power of the United States was defined. The Constitution simply says, "The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and the treaties made or which shall be made under their authority;—to all cases affecting ambassadors, other public ministers, and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states;—and between a state, or citizens thereof and foreign states, citizens, or subjects". But note that it simply says that the judicial power *shall extend* to these different types of cases. It does not say that the judicial power of the states *shall not extend* to such cases. Thus the Constitution maintains a discreet silence on the question of whether

the judicial power of the United States is exclusive or merely concurrent with that of the states. That dangerous question was left for the future to decide.

There are so many cases of this kind that it seems clearly erroneous to think of the Constitution as it came from the hands of the framers as a full-grown and final instrument of government for the United States. It was in fact in a very rudimentary state, and has come to be what it is to-day through many decades of elaboration and development. Its ambiguities have been interpreted and its elisions amplified by thousands of decisions of the Supreme Court. Its omissions have been supplied and its deficiencies corrected by nineteen amendments and a number of monumental acts of Congress. It has been expanded by custom and molded by usage. And it is still in the process of making. It is in truth a vital, growing thing, which is now so different from the original that its framers, could they be miraculously reincarnated, would have difficulty in recognizing it.

The Salient Features of the Constitution

Before proceeding with a detailed examination of the government of the United States, we should attempt to summarize the salient features of the constitutional system which was brought into being in 1789. Without the perspective gained by such a summary view we should be in danger of being lost in a maze of detail. Briefly we may say that the distinguishing features of our constitutional system are : (1) the federal division of powers, (2) the check-and-balance system, (3) the security of private rights, (4) the power of judicial review, (5) the relations between the states, (6) the amending process, and (7) the position of the citizen. Each of these will be briefly treated in the sections which follow.

The Federal Division of Powers

The biggest task of the convention of 1787 was the division of governmental power between the states and the central government. The chief reason for the failure of the Articles of Confederation had been the utter inadequacy of the powers of the central government; and it was therefore imperative, if the new constitution was to escape a similar fate, to create a strong and self-sufficient national government. But the states were immovably opposed to any extensive curtailment of their own powers, and the small states

correctly suspected the large states of desiring to set up a central government in which the large states would be the controlling element. The plain problem of the convention was to effect a division of power which would bestow upon the central government the powers necessary to enable it to maintain itself and preserve the solidarity and stability of the Union without at the same time arousing implacable opposition among the states.

This was by no means easy to do. The simple theory of federalism is that all powers of general purport or which can be most conveniently and efficiently exercised by general action should go to the central or national government, while those of strictly regional or local nature should go to the states. The convention of 1787 was not able to follow this rule literally or consistently. It was obliged to content itself with giving to the central government only the absolutely indispensable national powers and a few others with regard to which there was no serious controversy. In examining the federal division of powers, therefore, we find many things which do not seem compatible with sound federal theory. The fundamental powers given to the national government embrace the following: the power to levy and collect taxes, duties, imposts, and excises; to regulate interstate and foreign commerce; to coin money and regulate the value thereof; to control the foreign relations of the country; and to raise and support an army and navy. No national government could long exist without these powers. Certain other powers were clearly conferred upon the national government as a matter of convenience, and certain others, which for the same reason should have been given to the national government, were withheld. The Constitution, for example, gives the national government power to make uniform laws on the subject of bankruptcy. It is doubtless a great convenience and advantage to the business interests of the country to have uniformity of law on this subject, but it is not indispensable to the existence of the national government that it should have this power. Nor is uniformity of legislation on this subject a greater convenience than would be uniformity in several other fields. Why did not the Constitution give the national government power to make uniform laws on the subject of the validity of bills, notes, checks, and other negotiable paper; or uniform laws on the subject of the organization and procedure of corporations; or uniform laws on such subjects as banking and insurance? Uniformity in any one of these fields would be as great a boon to business as uniformity in the field of bankruptcy. The answer is two-fold. First, as intimated above, there were cer-

tain dangerously controversial subjects that had to be avoided; and, second, the truly national importance of such matters as negotiable paper, corporation control, banking, and insurance was not as clear in 1787 as it is today.

We now come to a second, and even more difficult, phase of the division of powers between the states and the nation. Even if it had been possible to make the division in strict conformity with sound federal principles, it would have been impossible to avoid conflicts between the states and the nation over disputed points of power. The Constitution operated as a grant of power to the national government; and accordingly all powers not granted to the national government by the Constitution remained to the states. But what was actually granted? Certain powers were enumerated as being granted, and then it was stated that the national government should have all powers necessary and proper to carry into execution these granted powers. Two difficulties arose at once. First, what was the meaning and scope of the enumerated powers, and, second, what was necessary and proper to carry such power into execution? Let us take a concrete example. The Constitution confers upon the national government the power to regulate interstate commerce. But what constitutes a regulation? And what is commerce? And when is commerce interstate? And what may be done to carry into execution a regulation of interstate commerce?

Questions of this kind have to be answered. But by whom? On this point the Constitution is ominously silent. It does declare that, "This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land . . . anything in the constitution or laws of any state to the contrary notwithstanding". The plain inference from this is that any law of the United States *not* made in pursuance of the Constitution is not the supreme law of the land and is not binding on the states. If that be true, who is to decide whether or not a law of the United States is made in pursuance of the Constitution? For many years the states, or a considerable number of them, claimed that they had the right individually to decide whether a national law was made in pursuance of the Constitution and therefore binding upon them. This was the extreme form of the doctrine of states' rights, which ultimately led to the Civil War. By the arbitrament of force in that war the issue was settled. It was decided that the national government through the Supreme Court of the United States has the final determination of whether a law of

the United States or a law of any state, is made in pursuance of the Constitution.

But that did not stop the conflict over disputed powers. Through judicial channels that conflict continues today with almost unabated intensity. There is very rarely a session of the Supreme Court in which one or more acts of Congress and many acts of state legislatures are not challenged as being contrary to the federal distribution of powers. The Supreme Court sometimes decides in favor of the nation and again in favor of the states. The recent Child Labor Cases will be remembered by all. In those cases the Supreme Court decided that Congress had no authority under the Constitution to enact legislation regulating child labor.

Another feature of the Constitution that is closely related to the problem of distribution of power was the compromise between the large states and the small states, which resulted in the states being given equal representation in the Senate and representation in proportion to population in the House of Representatives. The Senate was to be a body of state delegates, and the House a national legislative body. Without this compromise it would have been well-nigh impossible to get agreement on the grant of powers to the national government as made by the Constitution.

The Check-and-Balance System

The Articles of Confederation provided for only one organ of government—a Congress, consisting of a varying number of delegates from each state, but in which each state had one vote. This Congress exercised all of the powers of the central government under the Articles. Three executive departments were established, and the heads of these were appointed by and responsible to Congress. The Confederation had no judicial powers. It was generally conceded that the Articles were defective in not providing for a strong and vigorous executive and for a national judiciary. The convention of 1787 was expected to remedy these defects, and did. But in so doing it imported a new principle into American political life. It might have chosen to follow colonial and British precedents and practice, and to create executive and judicial agencies subject to and organically connected with the national legislature. But many members of the convention had been strongly influenced by the check-and-balance theory advanced by Montesquieu, the distinguished French publicist. Montesquieu believed that there are three entirely different kinds of governmental power—executive, legisla-

tive, and judicial—and that it is essential to the preservation of liberty and the proper functioning of government that these should be exercised by three separate and absolutely coördinate organs of government. He also believed that each of these organs should be counterpoised against the others so that the three would act as mutual checks upon one another.

To men whose minds were largely occupied with the problem of stability, permanence, and the protection of private rights, this was a most attractive idea. Nothing could be more plausible than that the impossibility of dominating such a tripartite system of government without obtaining simultaneous control of three entirely separate branches of government would discourage tyranny, whether attempted by an individual or an overbearing popular majority. The framers of the Constitution were as much afraid of the latter as the former. It seemed equally plain that the threefold separation would favor conservatism and stability, because three separate organs of government would not as quickly respond to sudden and temporary gusts of opinion and sentiment as would a single all-controlling organ of government.

The check-and-balance principle is more completely embodied in our government than any other. All legislative power is vested in Congress, all executive power in the President and his subordinates, and all judicial power in the Supreme Court and the lower Federal Courts. These three branches of government are entirely distinct in personnel and coördinate in position. No member of Congress may hold an executive or judicial position; no executive official may sit in Congress or on the bench; and no judge may be a member of Congress or hold an executive position. The members of Congress are elected by the people; the President is chosen by an electoral college, which is entirely independent of Congress; and the judges, though appointed by the President with the confirmation of the upper branch of Congress, hold their positions during good behavior, and thus are rendered virtually independent of the appointing power. At the same time each of the three departments is so constituted as to operate as a check on the other two. Congress by law provides for the organization of the executive departments and agencies under the President, and also for the organization of federal courts. The President may veto acts of Congress, but the veto may be overridden by a two-thirds vote in both houses of Congress. The courts have power to declare acts of Congress unconstitutional and void.

This check-and-balance system accounts for many of the peculi-

arities exhibited by our system of government. We experience many halts, delays, and deadlocks which could not occur in countries where there is but one all-powerful organ of government. Full and harmonious accord among all three branches of government is seldom attained, and can only be achieved by incomparably strong and well disciplined party organization. It is a common spectacle in this country to see Congress and the President at loggerheads, or, when they are united, to see the judiciary arrayed against them both. Indeed, friction among the three branches of government absorbs a large part of the energy and activity of politicians and statesmen in this country. And when one is disposed to wonder why so much of the activity of government in this country is negative in effect rather than positive, he should remember that the check-and-balance system was intended to work that way. That in fact is why it commended itself so strongly to the framers of the Constitution.

The Security of Private Rights

We have already alluded to the importance the framers of the Constitution attached to the security of private rights. The arbitrary disregard of the rights of personal freedom and security by the agents of the British government during the pre-revolutionary period, and the high-handed invasion of property rights by various state legislatures during and after the Revolution, created a profound conviction that the first and foremost function of government was to protect the rights of person and property. Since the Constitution was construed as being a grant of power to the national government, it was not thought necessary to introduce elaborate safeguarding restrictions upon the powers of the national government. It could have no powers not given to it, and no power to trespass upon private rights was given to it. But it was deemed necessary to impose certain restrictions upon the states. The most important of these were provisions forbidding the states to pass bills of attainder, *ex post facto* laws, or laws impairing the obligation of contracts.

When, however, the Constitution came up for ratification many objected to it on the ground that it created a powerful central government which might become an agency of oppression. They refused to be convinced by the argument that the national government could exercise no oppressive powers because none had been given it, and demanded amendments specifically restricting the powers of the national government. Several of the states ratified only

on condition that such amendments should be incorporated in the Constitution; and one of the first things done by Congress when the new government went into effect was to propose to the states a series of amendments of which ten were soon ratified. These first ten amendments are our great bill of rights against the national government. They do not apply to the states. They contain guarantees against the abridgment of freedom of speech or of press; against abridgment of freedom of religious worship; against unreasonable searches and seizures; against deprivation of life, liberty, and property without due process of law; against denial of the right of indictment by grand jury and trial by jury, and so on.

The Civil War brought recognition of need for equally strong guarantees against the impairment of personal and property rights by state action; and the Thirteenth, Fourteenth and Fifteenth Amendments, and especially the Fourteenth, may be considered a great bill of rights against the states. The Fourteenth Amendment forbids any state to make or enforce any law abridging the privileges and immunities of citizens of the United States, or to deprive any person of life, liberty, or property without due process of law, or to deny to any person within its jurisdiction the equal protection of the laws.

With these sweeping bans operating against both the states and the national government, the American Constitution goes beyond any other in protecting private rights. There is scarcely any action of government in this country, state or national, that may not be challenged on the allegation of unconstitutional interference with private rights. Indeed, the foreigner sometimes gets the impression that the process of government in this country is an interminable struggle between private and public interests in which the courts play the decisive rôle.

The Power of Judicial Review

The rôle played by the judiciary in the United States is undoubtedly the most unique feature of our system of government. Ours is the only important government in the world in which the courts have the power to review legislative and executive acts, and to pronounce them unconstitutional and void. The Constitution does not specifically bestow this power upon the judiciary; but it was very early acquired, and there is much evidence to confirm the belief that it was the intention of the framers of the Constitution that the courts should have this power.

The possession of this power of judicial review puts the American courts in a much different position than the courts in other countries. There the courts merely expound the law as it comes from the legislature, accepting it as unquestionably constitutional; here no public policy can be finally carried out until the courts, and ultimately the Supreme Court of the United States, have declared it constitutional, and therefore legally valid and proper. This function of the American courts drags them unavoidably into the arena of political controversy. Especially is this the case when the courts are called upon to construe one of the exceedingly ambiguous and doubtful portions of the Constitution where the issue must be more one of fact or of opinion than of law.

All questions of private rights under the Constitution; all questions of legal conflict between the different branches and departments of government; all questions of distribution of power between the states and the nation; and all other possible questions as to the meaning and application of the Constitution, are in this country decided by the courts. So prominent, indeed, is the position of the courts in this country that some commentators have not hesitated to say that the theory of three coördinate branches of government has broken down, and that we now have judicial supremacy.

The Relations Between the States

It is essential to the successful working of a federal plan of government that there should be an appropriate degree of harmony and reciprocity in the mutual relations of its component states, and that they should be restrained from entering into relations subversive to the federal union. This the Constitution undertakes to accomplish in a number of ways. The states are forbidden to enter into any treaty or alliance with foreign powers, or to enter into any agreement or compact among themselves without the consent of Congress. Nor may a state without the consent of Congress keep troops or ships of war in time of peace, or engage in war unless actually invaded or in imminent danger thereof. Congress is given power to regulate interstate commerce, and the states are forbidden to levy duties, imposts, and excises without the consent of Congress. The Constitution also provides that the citizens of each state shall be entitled to the privileges and immunities of the citizens of the several states, and this has been so interpreted by the Supreme Court as to protect citizens of any state against discrimination by any other state in the matter of fundamental civil rights. The Con-

stitution further declares that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. If it were not for this each state would be free to treat the public acts and proceedings of every other state as those of a foreign power, and not entitled to full recognition. And to facilitate the administration of criminal law throughout the country, the Constitution makes provision for the surrender of persons charged with crimes, who flee from justice in one state and are found in another state.

The Amending Process

The amending process is another characteristic feature of our system of government. The Articles of Confederation had been virtually impossible to amend, because it took the votes of nine of thirteen states in Congress to propose amendments and ratification by all of the states before they could go into effect. The framers of the Constitution recognized the need for a more liberal amending process, but at the same time felt that it ought to be sufficiently difficult to prevent sudden and sweeping changes. They provided, therefore, for the amendment of the Constitution as follows: (1) proposal of amendments by Congress by a two-thirds vote in each house, and ratification by the legislatures of three-fourths of the states; (2) proposal by Congress as above, and ratification by special ratifying conventions in three-fourths of the states; (3) proposal by a convention called by Congress upon application of the legislatures of two-thirds of the states, and ratification by the legislatures of three-fourths of the states; (4) proposal by the convention as just stated, and ratification by special ratifying conventions in three-fourths of the states.

The first method of amendment is the only one that has ever been used. It is the easiest of the four to invoke, but compared with the amendatory provisions of other national constitutions it is very difficult to use. In 136 years only nineteen amendments have been adopted, although hundreds have been proposed. This means that formal changes in the Constitution come very slowly and infrequently, and that the adaptation of the Constitution to modern needs and conditions must be brought about in other ways, chiefly by judicial interpretation.

The Position of the Citizen

The Constitution originally was very vague on the subject of

citizenship. It spoke of "citizens of the United States" and "citizens of the states," thus leaving room for the inference that there could be two kinds of American citizenship. Neither type of citizenship was defined, nor was the manner of acquisition described. Congress was given the sole right to confer citizenship upon aliens by naturalization, but nothing was said about the steps to be followed in the naturalization of aliens. The Fourteenth Amendment largely corrected the foregoing ambiguities by defining citizenship as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside".

Thus federal and state citizenship, if they were ever intended to be different, are made one and the same thing. Citizenship may be acquired by birth or by naturalization. Any person born in the United States and at the same time subject to the jurisdiction of the United States is a native-born American citizen. It is by virtue of this provision that the American-born children of Japanese, Chinese, and Hindus, who under our laws cannot be naturalized, become native-born citizens. Little Togo Yamoto, born in San Francisco of Japanese parents who can never become American citizens, is just as much an American citizen as little Richard Blueblood whose ancestors have been American citizens ever since the adoption of the Constitution. The Fourteenth Amendment leaves Congress to determine how citizenship may be acquired by naturalization, and Congress has enacted an elaborate body of law on this subject which will be fully treated in a later chapter.

American citizenship does not carry with it the right to vote. The regulation of the suffrage is a matter which the Constitution leaves to the states, and originally each state was free to grant or withhold suffrage at will and on any basis whatsoever. By the adoption of the Fifteenth Amendment it was provided that the right of citizens of the United States to vote should not be denied or abridged on account of race, color, or previous condition of servitude. The Nineteenth Amendment makes the same provision with regard to denial of the right to vote on account of sex. Except for these two restrictions there is nothing in the Constitution to keep the states from restricting the suffrage as they see fit or extending it to any persons they choose. A state law limiting the right to vote to persons over 50 years of age would be perfectly valid under the Constitution.

Although the Constitution does not inalienably guarantee the right of citizens to vote, it does bestow upon them other privileges and im-

munities of an exclusive character. Only citizens of the United States are entitled to the full protection of this government both at home and abroad. Only native-born citizens may qualify for the offices of President and Vice-President; and only citizens may be members of either branch of Congress. Curiously enough it is entirely possible for a citizen to be legally denied the right to vote and yet be eligible to the presidency or a seat in Congress.

American citizenship places one in subservience to and entitles him to the benefits of three, and often four, different governments—the government of the nation, the government of his state, the government of his county or town, and also, if he is a city dweller, the government of his municipality. Properly to perform his civic duties and to appreciate his civic opportunities the American citizen must clearly understand the working of each of these several governments.

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PART III
THE NATIONAL GOVERNMENT OF THE UNITED STATES

CHAPTER XVI

THE WORK OF THE NATIONAL GOVERNMENT

It is frequently said that the study of government should begin with the near and familiar and proceed to the remote and less well known. Acting upon this principle a great many writers have supposed that the study of American government ought to begin with the city, the town, and the county, and from that proceed to the state and finally to the national government. Such an attitude betrays a failure to comprehend the true nature of our system of government. Our national government is not one step more removed from the daily affairs of the citizen than is the government of his state, county, or city. Nor is state government more remote from everyday experience than the county or city. The truth is that all divisions of government in this country touch the citizen directly and intimately, and he is probably not more conscious of one than another.

The national government carries on its operations throughout the entire country; but the work it does brings it into just as frequent and familiar contact with the citizen as though its activities were confined to a single neighborhood. The state operates in a much smaller territory than the national government; but within that restricted area its functions are just as important and just as close to the citizen as are those of the national government. The county, town, and city are political subdivisions of the state; but their relation to the citizen is not substantially different from that of the state. We need to bear in mind that ours is a federal system of government, and that the division of power between the nation and the states is not upon the basis of what is remote from the citizen, and what is near, but upon the basis of what requires uniform or general action throughout the entire country and what requires only regional or local action. Much the same line of demarcation is followed in the division of authority between the state and its local subdivisions. The national government, for example, is empowered to regulate interstate commerce, while the states retain the power to regulate commerce within their own borders. Both the national

government and the states regulate railway rates. When you buy a ticket for a journey beyond the bounds of your state, the rate of fare is fixed by national regulation; but when you purchase a ticket over the same line for a journey within the state, the rate of fare is fixed by state regulation. Similarly when you ride on a city trolley line you pay a rate of fare fixed by municipal regulation; but if you get on an interurban car and travel over the same line to the limits of the city and on to another city, you pay a rate of fare fixed by the state government. Which government affects you most immediately and directly? The question answers itself. One government affects you most directly and closely in one capacity, while another affects you similarly in a different capacity. It all depends upon the activities in which you happen to be engaged. The ordinary person in course of his or her daily routine is, consciously or unconsciously in almost continuous contact with all divisions of our government—national, state and local.

To make this clear it is desirable to preface the treatment of each division of government with a sort of panoramic picture of the nature and scope of its activity. We begin with the national government.

The Functions of the National Government

The functions of the national government are of a threefold nature. First, it performs a great many activities which serve no purpose but to keep its own machinery in motion and effectively regulated and adjusted. These are its operative functions. Second, it carries on various activities which are necessary to the preservation of the Federal Union, and to its successful operation. These may be called its federal functions. Third, it performs many services for the direct benefit of the people of the United States. These are its service functions.

The Operative Functions of the National Government

Undoubtedly the first and foremost necessity for the operation of any government is the choice of officials to carry on the activity of government. Our national government is peculiar in that this function is not entirely under its control. To put our national government into operation in 1789 it was necessary first to elect a President and members of the Senate and House of Representatives, and this necessity has recurred every two and four years since that time. But under the Constitution, the elections for the choice of

presidential electors and members of both branches of Congress are conducted by the states under state law. The national Congress is given power to fix the time of choosing presidential electors, but has no authority over the manner of their choice, that being left entirely to the state legislatures. With reference to the choice of senators and representatives, the national Congress is given very extensive power to modify, supplement, or supplant state laws, and has exercised this power so freely that we now have an extensive body of Federal election laws.

Once the presidential electors are chosen, the casting and counting of their votes are subject entirely to federal control and regulation. So also is the process of settling the election when no candidate has received a majority in the Electoral College. Disputed congressional elections are also wholly subject to the power of the federal government.

Aside from the President and the members of the Senate and the House of Representatives, all officials and employees of the national government are chosen by the process of appointment. The Constitution provides four methods of appointment: (1) by the President alone, (2) by the President, by and with the advice and consent of the Senate, (3) by the heads of departments, and (4) by the courts. Congress, by law, determines which method shall be used in every case. There are over a half-million federal officials and employees, and the task of making the necessary appointments is manifestly of herculean proportions. Formerly it was the practice for the President or other appointing officer to rely almost entirely upon the recommendations of Senators, Representatives, and other persons of political influence. This resulted in so many flagrant abuses that laws were passed to provide for appointments on the basis of merit and qualification for the job as disclosed by some sort of examination or test administered to all applicants. To carry out this merit system of appointments the Civil Service Commission was created.

Following the selection of persons to carry on the work of government, it is necessary to have them so grouped and organized as to obtain proper direction and control. The Constitution creates no executive departments and no courts except the Supreme Court. All of the executive agencies and all of the lower federal courts have been created and their duties determined by act of Congress. There are now ten executive departments and more than twenty-five other executive establishments and agencies. In each of these there are many divisions and bureaus, and literally hundreds of thousands

of positions. There are two grades of regular federal courts below the Supreme Court and several special tribunals. Hundreds of judges are required to preside over these courts and administer their affairs. Congress not only creates all this machinery, but is constantly engaged in adding to it and altering it.

No organization can be operated without money, and naturally therefore one of the most important activities of the national government is the provision and collection of revenue. Most of the revenue of the national government comes from customs duties on imports, taxes on incomes, taxes on inheritances, and excise taxes on such commodities as tobacco, playing cards, spirituous liquors and automobiles. It takes most elaborate and careful legislation as well as a vast amount of administrative activity to perform this function. And when current revenues are insufficient the government must needs borrow. It does this by selling bonds or short-term obligations. The borrowing and repayment of millions and hundreds of millions of dollars quite obviously calls for legislative and administrative activity on a large scale. So it is also with the expenditure of such huge sums as the government must disburse to carry on its manifold activities. Imagine what it means to make up a payroll for 500,000 employees. The national government has that task to perform each month, and that is only one aspect of the problem of disbursement of funds. All financial operations call for careful and intelligible accounting, and to do this accounting work there must be thousands of bookkeepers and accountants constantly at work for the government in all parts of the country.

Closely akin to the financial operations of the government are the care, custody and management of government property. Scattered from Maine to California and from Washington to Florida are thousands of government buildings—post offices, forts, arsenals, office buildings, etc., which must be heated, cleaned, and kept in repair so that the work of the government may go on. In addition to this there is an almost incalculable quantity of moveable property to be looked after and cared for. Think of the many thousands of automobiles that are used in government service, and the attention they must require. And remember that many other forms of equipment are just as necessary and just as extensively used. You probably do not stop to think that the scales upon which the postal clerk weighs your package have to be provided for every post office in the land, and in addition to that must be kept in proper condition for service.

The foregoing are some of the more conspicuous operative func-

tions of our national government. Many pages could be filled with descriptions of others of the same sort. In general it may be said that the operative activities are less understood and receive less attention than any other work of the national government, and yet they are absolutely indispensable to the proper performance of its other functions.

The Federal Functions

To preserve and maintain our Federal Union and to render it workable, our national government is obliged to assume many responsibilities. It must quell domestic insurrections, guarantee to each state a republican form of government, prevent the states from transgressing the restrictions imposed upon them by the Constitution, and see to it that each state accords full faith and credit to the public acts and judicial proceedings of every other state and recognizes the privileges and immunities of the citizens of the several states.

As the agent of all the people of the United States the national government is charged with the duty of providing for the government of our territories and colonial possessions, and also with the government of the District of Columbia. It has further the power to admit new states to the Union.

These functions do not appear to be very extensive, but in reality they bulk large in the everyday work of the national government.

The Service Functions

The direct services rendered by the national government are far too numerous to be comprehended in any brief survey. The national government serves all of the people of the United States, and not just the people of one state or locality; and there is not a man, woman, or child in this spacious land whose daily life is not deeply influenced by the service activities of the national government.

The first big job of the national government is perhaps the national defense. It is the business of the national government to provide and maintain the army and navy and all of the auxiliary services necessary to the defense of the nation. Closely related to this is the conduct of our foreign relations. Only the national government has power to negotiate with foreign powers, to make treaties, and to carry on diplomatic relations.

One of the most important services of the national government is

the regulation of commerce, both foreign and interstate. In the regulation of foreign commerce the national government fixes and collects the tariff duties to be paid on imported goods, and this has a profound effect upon industry in this country, upon wages, and upon the cost of everything we buy. To facilitate shipping and prevent maritime disasters, the national government establishes and maintains lighthouses and signal stations of various kinds; conducts the coast and geodetic survey; dredges and improves channels and harbors; and maintains a compulsory steamboat inspection service. It also regulates the operation of all ships under the American flag, even going so far as to specify the conditions and terms of employment of seamen on American vessels. At the present time the national government is also engaged in the operation of a fleet of merchant vessels in competition with privately owned ships. To encourage overseas trade the national government has a huge army of consuls and commercial attachés stationed in all portions of the world, whose duty it is to gather information for the use of American manufacturers, exporters, and shippers. As a part of its function of regulating foreign commerce, the national government also controls the immigration of foreigners to the United States.

In the regulation of interstate commerce the activities of the national government are still more far-reaching. All railways, steamboat lines, motor truck lines, pipe lines, telephone lines, and telegraph lines which engage in commerce between two or more states come under the regulation of the national government as to the regulation of their interstate business. This power has been used by the national government to control rates charged, services rendered, and to supervise such agencies of interstate commerce in the transaction of their business. Under its power to regulate interstate commerce the national government has also taken steps to curb monopolistic combinations in restraint of interstate trade and unfair competitive practices (Sherman Anti-Trust Law, Clayton Anti-Trust Law, Packers' Control Law). It has likewise enacted a law forbidding the sale and transportation in interstate commerce of impure and adulterated foods and drugs, and requiring the producers of such commodities to submit to government inspection and control as a condition of engaging in interstate commerce. These are a few of scores of examples of the work of the national government in regulating interstate commerce.

The adoption of the Eighteenth Amendment, forbidding the manufacture and sale of intoxicating liquors in the United States, has thrown upon the national government an enormous task of com-

mercial regulation and control; for it must now stamp out the liquor traffic entirely.

The postal service is another of the great commercial functions of the national government. This service, which extends to the remotest parts of our dominions, was originally confined to letters and periodicals, but it has now been expanded to include such things as parcel post and postal savings.

Under the Constitution the national government is empowered to pass uniform laws on the subject of bankruptcy. Acting under this provision Congress has given us a national bankruptcy law; and the federal courts devote a large amount of time to the enforcement of this law.

The national government is also authorized by the Constitution to make provision for the protection of authors and inventors, and as a result we have a body of national law on copyrights and patents, which is administered through the administrative and judicial agencies of the national government.

The national government has exclusive power to coin money and regulate the value thereof. In the exercise of this power the national government issues not only gold and silver money, but various sorts of paper money as well. In the exercise of its power to regulate the value of money—and that involves the control of credit—the national government has established a gigantic system of national banks, headed by the Federal Reserve Board. There is no person so great and powerful and none so weak and insignificant that money and credit are not vital matters in his everyday life. No division of government can be closer and more important to the individual than that which controls the monetary system.

Another outstanding service of the national government is the conservation and development of natural resources. Everyone knows of the millions of acres of forest reserves maintained by the national government and of the huge projects it has carried on for the reclamation of arid and swampy lands. Very few, however, seem to realize that it is also engaged in numerous activities for the conservation and scientific development of our mineral, oil and water-power resources.

The national government is also engaged in many activities whose object is to assist and promote various kinds of trade and industry. A whole department of the national government is given over to the agricultural industry, and even that does not compass all of its activities in fostering and promoting agriculture. It also devotes a great deal of attention to the fishing industry, and maintains many

hatcheries for the propagation of food fishes. It carries on a geological survey which is of great benefit to the mining industry, and also endeavors to promote improved methods of mining. It constructs and improves waterways, and in times past has actively subsidized the building of railways. For the benefit of labor it maintains an employment service and carries on many studies of labor problems and conditions. For the benefit of commerce and industry in general it operates the Census Bureau and the Bureau of Standards.

The national government performs many services designed to promote science, education, and general welfare. These are too numerous for brief treatment, but we may mention as examples the Smithsonian Institution, the National Museum, the Bureau of Education, the United States Public Health Service, the Bureau of Pensions, the Veterans' Bureau, the Naval Observatory, etc.

The national government performs numerous services in the field of engineering and the construction of public works. These include not only the engineering and construction activities necessary to the work of the various departments and activities of the government itself, but also the construction of highways, the improvement of waterways, and the construction of reservoirs and dams.

The administration of the national domain is another great service of the national government. This includes of course the national parks, but it also includes millions of acres of unsettled land which is the property of the national government.

CHAPTER XVII

THE PRESIDENCY AND THE NATIONAL ADMINISTRATION

The office of President of the United States invests its incumbent with power, influence, and eminence far above that enjoyed by any monarch, premier, or president on earth. No hereditary monarch today wields anything like the power of the President of the United States, and no prime minister or president has independence and freedom of action comparable to that of our President. The American presidency is truly the greatest political office in the world. No other combines so many functions and possesses so many exalted attributes. It is an office whose powers and responsibilities call for a superman, but which is filled by a process of election which very frequently results in the choice of a man of ordinary and sometimes of less than ordinary ability.

I. THE ELECTION OF THE PRESIDENT

Breakdown of Original Mode of Choosing President

The Fathers of the Constitution did not provide for the election of the President by popular vote, because of their fear that the office would in that way be dragged in the mire of factional and partizan politics; and for the same reason they decided against election by Congress. To place the presidency above faction, above partizanship, and above politics, they devised the curious, indirect system of choice by an electoral college. It was provided that each state, in a manner to be prescribed by the state legislature, should choose a number of presidential electors equal to the number of its senators and representatives in Congress. No member of Congress or holder of any office or employment under the United States could be chosen as a presidential elector. On an appointed day the electors were to meet in their respective states and each elector was to vote for two persons. The votes were then to be forwarded to the capital and at a stated time to be opened and counted in the

presence of the Senate and the House of Representatives. The person receiving the highest number of votes, provided he received a majority of all the votes cast, was to be declared elected President; and the one receiving the next highest number, and also a majority, was to be declared elected Vice-President. If no person received a majority, the House of Representatives voting by states and each state delegation having one vote, was to choose the President from the five highest on the Electoral College list, a majority of the states being necessary to a choice. And in case of a tie for second place after the choice of a President, the Senate was to choose the Vice-President from the candidates remaining on the Electoral College list.

This system was soon upset by the rise of political parties. The state legislatures themselves assumed the function of choosing presidential electors; and a political party getting control of the state legislature could choose presidential electors who would invariably cast their ballots for the party candidates for President and Vice-President. This resulted in the tie in 1800 between Jefferson, the presidential candidate for the Democratic-Republican party, and Burr the vice-presidential candidate of the same party, and led eventually to the adoption of the Twelfth Amendment. This amendment required the electors to cast their votes for one person as President and another as Vice-President, and provided that the one receiving the highest majority vote on the presidential list should be President and that the one having the highest majority vote in the vice-presidential list should be Vice-President. In the event of a presidential election going to the House of Representatives the House was to choose from the three highest instead of the five highest as before; and in case of a vice-presidential election going to the Senate that body was to choose from the two highest instead of the remaining candidates as before.

This amendment instead of taking the presidency out of politics recognized parties as the decisive factor in the choice of the President and Vice-President, and really made it easier for parties to win the presidency. Presidential electors shortly lost all semblance of independence or discretion and became mere party agents to cast votes for party candidates, and state legislatures eventually provided for the choice of presidential electors by popular vote. Since one party or the other was sure to control a majority of the presidential electors and thus elect its candidates, the matter of choosing party candidates for the offices of President and Vice-President come to be of equal or greater importance than that of choosing presidential

electors. In course of time the system of nominating candidates by national party conventions was developed.

National Nominating Conventions

A national nominating convention is in theory a grand national assembly of delegates chosen by the rank and file of the party to nominate candidates for the offices of President and Vice-President, to adopt a party platform, and transact such other business as may be necessary. In reality it may fall far short of this ideal. There are two ways in which delegates to national conventions are chosen. In about twenty states laws have been enacted requiring them to be chosen by secret ballot of the rank and file of the party at a direct primary election; and in the remainder of the states they are chosen by state or congressional district conventions whose delegates are chosen by county conventions which are composed of delegates chosen by city, town or district conventions whose delegates are in turn chosen by mass meetings of party voters in microscopic precincts. In the latter case the delegates in the national convention are far removed from the rank and file of the party and are in no way responsible to them. In the primary states the delegates are more immediately responsible to the general membership of the party in their state, but unfortunately cannot be held to strict accountability.

Another reason why a national convention may not adequately represent the party is the unsound basis of determining the number of delegates for each state. The original practice in both parties was to allow each state twice as many delegates as it had senators and representatives in Congress, and the Democratic party still adheres to that rule. It can be seen at once that the effect of such a basis of representation is to give each state representation in national conventions in proportion to its voting strength in Congress instead of in proportion to the voting strength of the party in that state. In other words, the state is entitled to full representation in the national assembly of the party even though the party fails to poll a single vote in the state. Because of this basis of representation a very unfortunate situation has developed in the Republican party. The southern states, in which very few Republican votes are ever cast, were accorded representation in Republican national conventions according to their representation in Congress, and taken together they had about a third of the total voting strength of the convention. This group of southern delegates, though they were a

third of the convention, did not represent as much as one-tenth of the Republican voters of the country, because the Republican vote is concentrated in the northern and western states. It was possible therefore for any faction party in the north to make a deal with the southern Republicans and thus override the wishes of the representatives of the great majority of Republican voters of the country. And such combinations were facilitated by the ready willingness of southern Republicans to capitalize the situation to their own advantage. After several deplorable episodes, one of which nearly brought about the complete destruction of the party, the Republican party partially reformed the basis of representation in its national conventions. The representation of the southern states has been somewhat reduced, but it is still far in excess of what it should be. Such notoriously misrepresentative conditions have not arisen in the Democratic party because the voting strength of that party is more widely distributed than that of the Republican party; but a careful comparison of state representation in Democratic national conventions with the actual voting strength of the party in each state will show that Democratic national conventions are anything but truly representative of the great mass of voters of Democratic faith.

When one recalls that the thousand or more delegates who assemble to nominate their party's candidates seldom represent the rank and file of their party faithfully and fairly; that a large number of them (generally more than half) are professional politicians, officeholders, or office-seekers; and that the convention, starting as an unorganized mass-meeting, must within the course of a week or less organize and transact three or four of the most difficult and complicated pieces of business that any gathering of delegates could be called upon to perform, it is easy to understand why national conventions tend to degenerate into a monstrous travesty upon popular institutions. Decisions must be made, action must be taken, and at all events the harmony and solidarity of the party must be preserved. Minor fights and sham battles do no harm, but titantic struggles such as that which developed in the Democratic party in 1924 endanger the very existence of the party. Therefore, while on the floor of the convention the appearance of spontaneity is preserved, behind the scenes, in committee rooms and hotels, astute "insiders", professional politicians, and managers of candidates are assiduously engineering deals and understandings. As a statement of party principles, there is drafted and voted through a platform, couched in such meaningless, ambiguous, and yet grandiloquent phraseology as

to silence all differences of opinion and appeal for votes from all quarters. And in nominating candidates the ruling consideration is not to put up the best known man, the strongest man, the ablest man, the most distinguished statesman, but to put up a man on whom all factions and elements can unite. From the standpoint of the professional party politician it is better to lose with a colorless and unknown candidate than to win with a strong, outstanding figure whose victory would be more a personal than an organization achievement and would probably alienate many influential elements of the party. Such is not invariably the case, but it is all too often true, and has been somewhat more common in recent years than formerly.[1]

[1] One of the most cynical descriptions of convention procedure in recent years appeared in the ultra-conservative Saturday Evening Post just after the Republican National Convention of 1920. In part it was as follows:

At first glance it looks like the old show, with two rings and a platform for the ballyhoo and the grand concert. Everything has been done in full harmony with the fine old traditions, if we except the introduction of a cheer leader at the convention; but something had to be conceded to the progressive wing of the party.

Already the first of the good old acts to which we have thrilled since boyhood is in the arena. It is what is known to the profession as the brother act. No matter how intense their off-stage antipathies, no matter what their inner convictions, the political tumblers and contortionists are shaking hands in full view of the audience and preparing to work as parts of a perfect pyramid.

Make no mistake, the bloodcurdling, death-defying, wire-balancing, six-horse-straddling acts that were so dear to the heart of our boyhood are positively scheduled and will be performed as promised, rain or shine. They are feeding the tigers raw meat, and their bloodcurdling roars will absolutely terrify the timid. The clowns are putting on their paint preparatory to handing us a hearty laugh. They will lead out the venerable donkey and defy anyone to ride him in safety. In addition to all the old features there will be a grand, glittering, and gorgeous pageant of suffragettes, mounted on mastadonic elephants, dazzling the eye of the beholder with their Oriental magnificence. Nor will the little pea and the three shells be altogether missing from the grounds.

It is interesting to go behind the scenes at the circus; to discover how one directing brain brings order out of chaos; to see how each man in the milling crowd has his part, his cue, and how at the exact moment when he is needed he is in the exact spot where he is needed; how even the delightful surprises that swell the big top with cheers—such as the finish of the chariot race—are carefully planned and staged with the most minute attention to detail. Neck and neck they run till the last lap, the daring charioteer in his shining armor, and the cameo-faced kid of the Coliseum riding them three abreast.

The National Committee

The governing authority in each party is a national committee. The members of the national committee are chosen in the national convention, the delegation from each state having the right to name the national committee members for that state. There are some states which by law require the delegation from that state to name the persons selected by the voters at the party primaries. Formerly each state was entitled to one member on the national committee, but both parties have recently adopted a rule giving each state two members and requiring that one shall be a man and the other a woman. The national committee is supposedly the humble servant of the party, deriving all its authority from the convention. But in reality the national committee dominates the affairs of the party and to a large extent dominates the convention itself. We had the spectacle in the spring of 1924 of the Republican National Committee openly disregarding a resolution of the Republican convention of 1920 further curtailing southern representation, and refusing to put it into effect. In a sense the national committee is even more misrepresentative of the party than the convention itself, because the states are equally represented on the national committee regardless of population or party vote. The functions of the national committee are to finance and manage the quadrennial presidential campaign and to manage all party affairs between presidential years.

The race is all but run and won. The audience rises to its feet to hail the victor. Cheers split the air.

But who is this? as old Cap. Collier would say. Who, indeed? At the last moment the modest favorite of the gods, who has been lying back with Hoover and Sproul and Allen, lashes his foam-flecked steeds, draws out of the ruck, and finally noses out the heroes of the earlier ballots. The circus understands the art of giving the people what they want, or of making them think they wanted what they got.

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Harding was not the popular choice; he was not even seriously considered by the American public. It knew little or nothing about him, and despite the reams of stuff that will be printed by the party press to create a Harding myth between now and November, it can know very little about him until he begins to perform as President, if he is elected. If the people had been free to express their wishes either Hoover, Wood, Lowden, or Johnson would have been selected. On performance we favored Hoover. Potentially Harding may be better than any one of them, but he was the politicians' and not the people's choice. * * *

—Editorial in Saturday Evening Post, July 24, 1920.

Aspects of the Presidential Campaign

There is no need here to dwell at length on presidential campaigns. The theatrical aspects of these contests are well known to all. There are, however, a few unspectacular facts that should be emphasized. One is that it takes an enormous amount of money to conduct a presidential campaign, and this money has to come from voluntary contributors. There is frequent talk of "passing the campaign hat" among the rank and file of the party and raising the required revenue by means of small contributions from a large number of people. But every person who has had experience in raising money knows that the cost of soliciting so large a number of people all over the country would probably exceed the amount raised. Furthermore, it is well known that party loyalty with the average person is not sufficiently strong to open his purse. The bulk of the money is therefore raised by contributions from persons of wealth in amounts ranging from $100 to $100,000. It would not be accurate to say that those who contribute such large amounts have ulterior motives, but being human they do very often expect something in return for what they give.

Another point to be borne in mind is that the election is a struggle for electoral votes and not popular votes. We too often lose sight of this and imagine that all votes in all states are of the same value. Such is not the case. A Republican vote south of Mason's and Dixon's line is worth almost nothing, and a Democratic vote north of Boston is worth very little. The votes that really count are those which are likely to change the result in the states which have many electoral votes and are as likely to swing one way as another. Such states as New York, Ohio, Indiana, and Illinois are the focal points of party effort. And this tendency to concentrate the campaign in the big, doubtful states is accentuated by the rule that the party which gets a plurality of the popular vote in a state gets all of its electoral votes. Thus it is easily possible for a party to win by very narrow margins in the big, doubtful states and so get enough electoral votes to elect its candidate, although he may have an actual minority of the popular vote. This has happened several times in the history of presidential elections.

And when at last the hullabaloo is ended and on election day we go to the polling booth we should realize this fact: that we are not going to be permitted to vote our own free and personal preference, but merely to choose between two or possibly three persons put

up as candidates of political parties. We may dislike them all, but one of those men is absolutely certain to be called to the high office of President of the United States. And if we do vote for one of them, our vote will be absolutely thrown away unless our party carries the state. If the other party carries the state by even so narrow a margin as one vote, it gets all the electoral votes, and all votes cast for electors of other parties are ciphers. If every voter would ponder these things as he marks his ballot, there would soon be some drastic changes in the process of choosing the President of the United States.

II. PRESIDENTIAL POWERS

A reading of the Constitution gives a very imperfect conception of the scope and magnitude of the powers exercised by the President of the United States; for the brief phraseology of the Constitution reveals nothing of the tremendous expansion of the powers of the President through usage, statute, and judicial interpretation.

War Powers

The Constitution declares that Congress shall have power to declare war, raise and support armies, provide and maintain a navy, make rules for the government of the land and naval forces, provide for organizing, arming, and disciplining the militia and for calling them forth as occasion may require; and that the President shall be commander-in-chief of the army and navy, and of the militia when called into the service of the United States. It would seem at first glance that the military powers of Congress are much more extensive than those of the President, and that there might conceivably be some conflict between the two. Such, however, is not the case. Congress only can declare war in the formal legal sense, but the President has far more power to get the country into war than has Congress. As will be shown in a later paragraph his almost absolute control over our foreign relations, enables him to take the country to the verge of war without consulting Congress, and being commander-in-chief of the army and navy he can actually order hostilities to begin and send troops and fleets into battle without the consent of Congress. In most of our foreign wars the President has handled the situation alone or practically alone up to the point where war has seemed unavoidable and has then gone to Congress and asked for a declaration of war. On several occasions also the

President has ordered American troops to invade foreign countries and American naval squadrons to bombard and blockade foreign parts without asking for a declaration of war. Such, for example, was the nature of the American invasion of Mexico and the bombardment and blockade of Vera Cruz in 1916–17, and also the American invasion of Russia and Siberia in 1918. All such proceedings are technically in accord with the President's constitutional prerogatives.

Congress provides and equips the army and navy, defines and establishes their organization along broad lines, and establishes certain general regulations. The President by and with the advice and consent of the Senate appoints all officers of the army and navy, and through the War and Navy departments controls all movements of troops and ships. By virtue of his being commander-in-chief of the army and navy the powers of the President are enormously expanded in time of war. Whatever a military commander-in-chief may do in time of war to accomplish the defeat of the enemy, the President may lawfully do. In time of war, especially if the country is invaded, the normal civil law is largely suspended. So in time of war the position of the President may approximate that of a military dictator.

Foreign Relations

Reference has already been made to the Presidents' control over foreign relations. With regard to treaties, the President has full power to conduct all negotiations, either in person or through diplomatic agents under his control, and to complete the formulation of a treaty in every detail without consulting any one. Before it becomes binding the treaty must be ratified by a two-thirds majority in the Senate, and this is practically the only limitation there is on the President's power to conduct the foreign relations of the country. And some Presidents have at times circumvented this limitation by means of executive agreements, which in form are not treaties but merely agreements between the executive departments of two countries. A good example of this is the Lansing-Ishii agreement, which bound the United States to recognize something like a Japanese Monroe Doctrine. This momentous agreement was made and dissolved by arrangements between the American State Department, acting under instructions from the President, and the Japanese foreign department, and not a syllable of it was ever submitted to the Senate. The President's further powers in the field of foreign relations

include the right to appoint (with the approval of the Senate) and to remove or recall all American representatives in foreign countries. He also has the power to receive representatives sent by foreign countries to the United States, and unless they are received by the President they can have no official standing in the United States. Through these two powers the President is enabled to determine in his own discretion whether a new government shall be recognized by the United States or whether the United States shall continue diplomatic relations with a foreign power with which some difficulty has arisen. The President decides whether the United States shall be represented in various international conferences, and in most cases appoints the delegates who are to represent this country.

Administrative Powers

The President is head of the administrative branch of our national government, and in that capacity exercises powers whose significant character is too little understood. A huge army of over 500,000 civil servants is under his control and direction. With the advice and consent of the Senate he appoints the incumbents of all major positions in the federal service; and he and the heads of departments under his control appoint all minor officials and employees without senatorial ratification. As a result of the adoption of the merit system in 1883 the great majority of appointments now made by the President are made from lists of persons certified by the Civil Service Commission as having passed the required examination. But the President has full power to decide which particular positions or classes of positions shall be subject to the merit system, and by executive order he may at any time place a certain position or group of positions under civil service or remove them from civil service. The President's power to remove federal officials and employees is even greater than his power of appointment. He may remove without the consent of the Senate even in cases where he must have the consent of the Senate for appointment. He may remove for any cause that seems to him sufficient, and is responsible to no one but himself for his exercise of this power. He also has authority to issue specific and minute instructions to heads of departments and other administrative officials and employees subordinate to him, and to insist upon their obedience. The famous Teapot Dome affair began with an executive order of the President transferring the administration of the naval oil reserves from the Navy Department to the

Interior Department. It happened in this case that both secretaries approved the order, and in fact were instrumental in inducing the President to issue it; but if both had been opposed to it, they would have nevertheless been obliged to obey it or surrender their offices. In addition to this power of executive direction, the President has power to issue rules and regulations supplementing acts of Congress for the control of administrative departments and agencies and the transactions of executive business. These have the binding force and effect of law upon private citizens as well as public servants. The Postal Regulations are a good example.

Pardoning Power

The President has power to grant pardons and reprieves for offenses against the laws of the United States. The only limitation on this is that he shall not pardon in cases of impeachment. It goes without saying that his power of pardon does not extend to offenses against the laws of the states. Offenses against federal laws may be pardoned by the President any time after their commission. The President is not obliged to wait until the offender has been tried and convicted. He may grant the pardon conditionally or unconditionally, and as a part of the pardoning power may remit fines and commute penalties.

Legislative Powers

The President's legislative powers as granted by the Constitution are three in number—the veto power, the power to communicate with Congress and make recommendations by message, and the power to call Congress in special session. It is probable that these powers were not originally intended to give the President a large measure of influence in legislation. The veto power was introduced as a part of the check-and-balance system, and was viewed as primarily a means whereby the executive might resist and offset unconstitutional encroachments upon its own independent sphere. For many years the veto power was sparingly used and chiefly in cases where the President believed the act of Congress to be unconstitutional. Beginning, however, with Andrew Jackson, the veto power has come to be employed with increasing frequency to enable the President to defeat or force a reconsideration of measures deemed by him unwise or inexpedient from the standpoint of policy. Congress can, to be sure, overcome the presidential veto by a two-thirds vote in

both houses; but such a large majority is difficult to obtain. Loyalty to the President is demanded of all members of the President's party and if the President's party represents more than a third of the membership of one branch of Congress, it is practically impossible for Congress to override his veto. Of late years Presidents have not hesitated to announce in advance that if certain measures are passed they will be vetoed, and in most cases, such a threat is sufficient to obtain modifications in conformity with the President's wishes.

It is quite clear from the debates of the Constitutional Convention and the language of the Constitution that the message power was not intended to give the President any extraordinary influence upon legislation. Indeed, it was expected to operate more as a check upon the President than as a weapon in his hands. He was required from time to time to give Congress information as to the state of the Union (in other words to report to Congress and give an account of his administration of affairs), and to recommend to the consideration of Congress such measures as he should deem necessary and expedient. But in the hands of Presidents wielding the scepter of party leadership the presidential message has come to be a decisive factor in legislation. The regular annual message, instead of being a report to Congress giving information as to the state of the union, has come to be a document in which the President outlines the program of legislation he wishes adopted and appeals to the country to support him and force Congress into line. The special message, delivered whenever the President may choose, has come to be a most effective means of focusing the attention of Congress and the country upon some matter which the President conceives to be of unusual importance, and of urging and at times virtually commanding action in accordance with his views. The prestige and power of the President are so great and his position of party leadership is so obvious that Congress cannot treat lightly or ignore anything he may recommend in a message. The revival of the practice of the President in person reading his messages to Congress has given the President an additional advantage of dramatic character in his relations with Congress. For a message read by the President in person gets far more publicity and makes a much stronger appeal to the country than one sent by him to be read in Congress by a clerk.

The power of the President to call special sessions of Congress was originally intended to serve as a means of meeting extraordinary situations which might develop during a recess of Congress. It serves this purpose of course, but it has also come to be an important legislative power of the President. The President is the

sole judge of whether the occasion demands a special session and he may summon a special session for any reason he thinks sufficient. It is possible, therefore, for him to summon Congress in special session to consider a legislative program which he wishes acted upon at once, and Congress when called in special session cannot very well devote its attention to other matters.

The President as a Party Leader

In no one particular has the development of the Constitution been more contrary to the intentions and expectations of the Fathers than in the position of the President in reference to political parties. It was the unshaken purpose of the Fathers to place the presidency on a plane above partizanship, and beyond the reach of party influence. Unwittingly they defeated their own purpose by creating a check-and-balance system of government, which without political parties would have resulted in a perpetual state of conflict and deadlock. Party government was necessary to make the check-and-balance system workable, but party government without party control of the Presidency was impossible. Political parties accordingly soon found ways of surmounting all constitutional barriers and of converting the Presidency into a distinctly party office. Nor was that all. The enormous powers of the President, the eminence and prestige of the position, and the manner in which presidential candidates were named and elected made it inevitable that the President should become the unquestioned leader of his party.

This aspect of the presidential office cannot be too strongly emphasized. Every one who would understand the presidency today must realize that the President is elected to be not only the executive head of a great government but the head of a great party as well, and his duties as party chief are no less important and exacting than his duties as chief executive. The President must be in close and constant touch with every significant phase of party activity, must be thoroughly informed as to the details of party organization and procedure in all parts of the country, must maintain close relations with party leaders in all sections, and must exert an active influence upon all party decisions, large and small. Party considerations must be taken into account, and frequently are of ruling importance, in all that he does. He must distribute jobs "for the good of the party"; he must view proposed legislation from a party standpoint; he must assume responsibility for developing and carrying through a pro-

gram of legislation to conform to the pre-election pledges of his party; and he must act as supreme arbiter in settlement of any controversies or conflicts within the ranks of his party.

Most remarkable of all, however, in contrast with the situation in other countries is the fact that the President, though supreme leader of his party, is almost wholly immune from party control. He is not responsible to a party majority in Congress, as are prime ministers who are the leaders of ruling parties in European countries. He is not responsible to the national committee of his party; it cannot depose him, as the governing committee of a party in Europe can unseat the party leader. Nor is he responsible to the national convention of his party; his vast powers both official and political generally enable him to dominate the national convention. As long as he remains President he has almost dictatorial power as a party leader. But the moment he ceases to be President, he ceases to be leader of his party and has only so much influence as his personal qualities enable him to obtain. This too is in marked contrast with party practice in Europe, where a prime minister whose party has lost an election comes back to parliament as leader of the opposition. With us party leadership is attached to the office of chief executive, and the incumbent of that office is *ipso facto* leader of his party; while in Europe the position of chief executive is incidental to party leadership, and the individual who is chosen leader of the party in power, by that fact becomes chief executive.

III. THE NATIONAL ADMINISTRATION

The Beginnings of the National Administration

Our national administrative system is older than the Constitution, and may in fact be traced back to the administrative organization set up by the Second Continental Congress during the Revolution. When the Articles of Confederation went into operation in 1781, the Congress created by that instrument took over the administrative affairs of the Continental Congress and created three administrative departments—Foreign Affairs, War, and Finance. Each of these departments was headed by a superintendent or secretary who was appointed by Congress and was solely responsible to that body. There was no chief executive.

The present Constitution, which superseded the Articles of Confederation in 1789, made no provision for administration departments, and except by indirect references is totally silent on the sub-

ject. The executive power is vested exclusively in the President, and it was clearly intended that he should be the chief administrative officer, and the head of the national administration.

He is given power, by and with the advice and consent of the Senate, to appoint public ministers (a term that includes heads of departments), and without the consent of the Senate to appoint such inferior officers as Congress may designate. He is also given authority to demand an opinion in writing from any head of department on any subject pertaining to his department, and he is further enjoined to take care that the laws be faithfully executed.

But the President has no power to create administrative departments or define and determine their powers, duties, and internal organization. That is a function of Congress; though of course the President may use his veto power in connection with legislation on the subject of administrative organization. One of the first acts of Congress upon the inauguration of the new government in 1789 was to pass statutes creating three executive departments corresponding to the three already in existence under the old government and taking over their functions.

The three departments thus established were called the Department of Foreign Affairs (this title was soon changed to Department of State); the Department of War, and the Treasury Department. Additional departments have been established since that time as follows: the Department of Navy in 1798, the Post Office Department in 1829; the Department of Interior in 1849, the Department of Justice in 1870, the Department of Agriculture in 1889, the Department of Commerce and Labor in 1903, and the Department of Labor in 1913.

In addition to these departments Congress has from time to time created a number of independent administrative agencies, such as the Interstate Commerce Commission, the Federal Trade Commission, and the Federal Reserve Board.

The Legal Status of the Administrative System

We have seen that all executive departments and other administrative agencies are created by act of Congress. In exercising this power Congress has taken great pains to specify in elaborate detail the precise powers, duties, and organization of each department and agency. In establishing a department Congress enumerates all its powers, duties, and functions; then provides for its division into bureaus or other subdivisions and enumerates the duties, powers,

and functions of each such division; and finally specifies the manner in which all officials and employees shall be chosen. These arrangements are absolutely binding and may not be altered in the slightest degree by the President or the heads of departments, except by act of Congress or by authority delegated to the President or head of department by act of Congress. If the President believes that the enforcement of our prohibition laws can be carried on more efficiently in the Department of Justice than in the Treasury Department, where Congress has placed the Prohibition Commissioner, he cannot forthwith issue an order transferring that officer to the Department of Justice. And if the Secretary of Treasury believes that it would be conducive to efficiency to have the Prohibition Commissioner in the Secret Service Bureau of the Treasury Department instead of the Bureau of Internal Revenue, where that official has been placed by Congress, he has no power to make such a change. Or if both the President and the Secretary of Treasury believed that the Prohibition Commissioner ought to have additional powers not prescribed in the act creating the office, they have no authority to bestow such powers upon him.

To make those changes would require an act of Congress, for Congress alone has authority to create administrative machinery and regulate its functions and operations. In 1918, as an emergency war measure, Congress passed the Overman Act authorizing the President temporarily to create, abolish, and transfer bureaus and offices at his discretion; and there were many constitutional lawyers who were doubtful of the validity of this act even as a war measure. It was never brought before the courts.

Though Congress determines the structure and organization of the administrative system, and the duties and powers of all departments, bureaus, and officials, the President, together with the heads of departments who are his deputies, has supreme and undivided authority to direct the administrative system as a going concern. Through his power of appointment and removal, his power to see that the laws are faithfully executed, and his power to issue rules and regulations binding upon heads of departments and all other departmental officials and employees, he is able to compel all members of the administration to accept his interpretation of the meaning of the acts of Congress defining their powers and duties and to do such acts as he deems requisite for the proper performance of the administrative work of the Federal government.

To revert to the illustration used in the preceding paragraph, Congress defines the powers and duties of the Prohibition Com-

missioner and determines his place in the administration, but Congress cannot order him to send a corps of enforcement agents to a particular city on a given date, to raid a specified establishment at a given time, or to prosecute certain individuals. Those are executive matters and belong entirely to the President.

The President can order the Prohibition Commissioner and all his subordinates to sit in their swivel chairs and do nothing, and they must obey him. Congress is powerless to countermand the order or to direct the prohibition officers to do otherwise. Its only recourse is to bring impeachment proceedings against the President.

So we see that the legal status of the federal administrative system is such as to produce many difficulties. Congress has endeavored to control the administrative discretion of the President and his administrative subordinates by legislation covering the most minute and microscopic details of administrative organization and procedure, and the result has been a rigid and inflexible system of organization and distribution of functions that prevents prompt and effective readjustment of the administrative machine to meet the ever changing exigencies of administrative work.

During the World War this condition nearly resulted in a national disaster, and Congress was obliged temporarily to give the President a free hand in the matter of administrative organization and procedure. But the difficulty is only slightly less serious in time of peace. Almost daily the administration is confronted with problems whose solution is much impeded by the inadequate and ill-contrived organization with which they must be attacked; and the resulting delay, waste motion, and expense are a tremendous burden upon the people of the country.

On the other hand it is not to be denied that Presidents and heads of departments have not hesitated to use their uncontrolled administrative discretion in order to have the last word in controversies over political issues. President Harding on one occasion served notice upon Congress that if certain river and harbor appropriations not called for in the budget were passed over his veto he would order the Secretary of War not to let contracts for the work and not to spend any of the money. This may seem to be an extreme case of abuse of executive discretion to defeat the purpose of Congress, but in fact it is mild compared to things done by certain of Mr. Harding's predecessors, notably Mr. Wilson and Mr. Roosevelt.

The crux of the trouble of course is our check-and-balance system of government which results in an antagonistic relation between

Congress and the Executive instead of one of close correlation and harmony.

The Growth of the National Administration

The administrative establishment of the United States during the administration of President Washington would not be adequate for a medium sized municipality at the present time. The newest and smallest of the present departments, the Department of Labor, has a larger staff of officials and employees than the entire Federal Government had under Washington.

The Department of State, which began its existence with only the Secretary of State and two or three clerks now has several hundred persons on its staff, not including those in the diplomatic and consular services. All other departments have grown in like proportion. The Post Office Department alone now has over 288,000 officials and employees. Altogether, not including the army and navy, there are over 500,000 officials and employees in the administrative service of the United States. During the recent war the number rose to 800,000.

Present Administrative Departments and Their Functions

Considering the departments in the order of their creation, the Department of State is the first to claim attention. The work of the Department of State now has to do almost entirely with the administrative activities arising in connection with the direction and management of our foreign relations. The diplomatic service which consists of our ambassadors, ministers, and other political representatives in foreign countries, is under the Department of State. So also is the consular service, which consists of our consuls general, consuls, consular agents, and other commercial representatives in foreign countries.

The Department of State operates an elaborate intelligence service, and carries on many routine activities having to do with correspondence and records pertaining to foreign affairs. This department is also the official repository of acts of Congress and custodian of the Great Seal of the United States.

The Department of the Treasury is next in order. As the title indicates it has chiefly to do with financial matters. All administrative business having to do with the national debt, loans of the government, auditing and accounting, the collection of taxes, customs du-

ties, and other forms of revenue, the disbursement of funds, and the coinage of money are necessarily in this department. It also has a great many functions which do not properly belong to a financial department, but which have been dumped into the Treasury Department because they seemed to fit there as well as elsewhere. Such are the Public Health Service, the Supervising Architect Office, the Life Saving Service, and the Prohibition Commissioner.

Next comes the Department of War. This department has to do primarily with the management and control of the army, but certain incongruous functions are also to be found in the War department. The Bureau of Insular Affairs has to do with civil administration in our colonial possessions; the Office of the Chief of Engineers is concerned primarily with public works of a non-military character, such as the construction of river and harbor improvements for the benefit of commerce; the Inland and Coastwise Waterways Service is also commercial in character

The Department of Navy is occupied with the management and direction of the navy. The principal non-naval services are the Hydrographic Office and the Naval Observatory.

The Department of the Interior embraces a miscellaneous assortment of functions, such as the General Land Office, which administers the national domain; the Reclamation Service, which constructs and manages irrigation and drainage works; the National Park Service, which administers the national parks; the Bureau of Indian Affairs, which controls all the affairs and relations of the American Indians; the Bureau of Pensions, which administers the military and civil pension laws of the national government; the Patent Office, which administers the patent law of the country; the Bureau of Education, which carries on many advisory and research activities in the field of education; the Geological Survey, which is of scientific character; and the Bureau of Mines, which administers various laws for the promotion of scientific and safe methods of mining. There are also several other services of lesser importance.

The Department of Justice, headed by the Attorney General, is the legal adviser of the President and the various departments and agencies of administration, and is also responsible for the initiation and prosecution of all suits and actions at law in behalf of the United States.

The Post Office department directs and operates the postal service. The postal service now includes an express service (parcel post) and a savings service (postal savings).

The Department of Agriculture administers a great many services

for the benefit of farmers throughout the country. The principal agricultural services are performed by the Bureau of Animal Industry, the Bureau of Plant Industry, the Bureau of Soils, the Bureau of Entomology, the Bureau of Biological Survey, the Bureau of Agricultural Economics, the Insecticide and Fungicide Board, the Horticultural Board, and the Bureau of Publications. In addition to these the Department of Agriculture includes the Weather Bureau, the Forest Service, the Bureau of Public Roads, the Bureau of Chemistry, which enforces the pure food and drug laws, and the administration of the law for the control of packers and stockyards.

The Department of Commerce includes the Bureau of the Census, the Bureau of Foreign and Domestic Commerce, the Bureau of Standards, the Bureau of Fisheries, the Bureau of Lighthouses, the Bureau of Navigation, the Coast and Geodetic Survey, and the Steamboat Inspection Service. All of these, except the Bureau of the Census, have to do directly with the promotion and protection of commerce and industry.

The Department of Labor is not accurately named, as its major activities do not pertain directly to labor. It includes the Bureau of Immigration, the Bureau of Naturalization, the Children's Bureau, the Women's Bureau, and the Housing Corporation, which affect labor, if at all, indirectly and somewhat remotely. In addition to these are the Bureau of Labor Statistics, the Division of Conciliation, and the Employment Service, which are of immediate and direct concern to labor.

The Cabinet

The heads of these ten departments constitute the President's Cabinet. But this is entirely a matter of custom and not of law. The Cabinet was developed entirely by the practice of the President in calling in the department heads to sit with him as his advisers. The President may include or exclude any official he sees fit. President Harding invited the Vice-President to sit with the Cabinet, and the Vice-President had just as much right to participate in Cabinet sessions as any head of department. The President might have invited the chairman of the Interstate Commerce Commission, the Federal Trade Commission, and so on, had he chosen. If he had done so they would have been properly qualified members of the Cabinet. As we have noted above, the Cabinet has no power to take any action of official or binding character; it is purely advisory.

The Independent Executive Establishments

In addition to the ten departments described above there are a number of executive establishments organized outside of the regular departments. These are usually headed by boards or commissions directly responsible to the President. The most important of these are the Civil Service Commission, the Interstate Commerce Commission, the Federal Trade Commission, the Federal Reserve Board, and the Tariff Commission, the Shipping Board, and the Railroad Labor Board.

The Civil Service Commission will be treated in another section; the others will be briefly reviewed at this point.

The Interstate Commerce Commission is responsible primarily for the administration of federal law regulating all interstate carriers, such as railways, steamships, motor trucks, pipe lines, and telephone and telegraph lines. Its duties include the fixing of rates to be charged by interstate carriers, the prevention of discrimination between shippers, and the supervision of the services rendered. It is a body of eleven members, appointed by the President by and with the advice and consent of the Senate. The term of office is seven years, and as the terms rotate, the vacancies do not all occur at one time nor within the duration of one administration.

The Federal Trade Commission is a body of five members appointed by the President and Senate for seven-year terms in rotation. Its duties are to conduct investigations respecting supposed violations of the Federal anti-trust laws; to supervise the enforcement of court decrees under the anti-trust laws; to require corporations to file reports and answer questions; to make reports and recommendations to the President and to Congress, and so on.

The Federal Reserve Board is composed of the Secretary of the Treasury and the Comptroller of the Currency *ex officio* and six members appointed by the President and Senate. Its duties are to supervise, watch over, and regulate every feature of the Federal Reserve Banking System. It receives reports from federal reserve banks, controls their accounts, regulates their issuance and retirement of notes, and controls to a certain degree their official personnel.

The Tariff Commission consists of six members, three of each political party, appointed by the President and Senate for a term of twelve years. It is the duty of this body to investigate the effects of American tariff laws upon commerce, industry, and labor, and upon the national revenues. It is required to report annually to

Congress, and to conduct such special investigations as may be required by the President and the tax committees of Congress.

The United States Shipping Board is a body of seven members with six year terms, appointed by the President and Senate. Its duties are to operate or lease for operation under the American flag the merchant and passenger vessels which were acquired by the Government during the World War; to establish steamship lines from American to foreign ports in order to secure adequate transportation and postal service; and to prevent foreign shipping lines from undermining American lines by unfair and illegal competition.

The Railroad Labor Board is a body of nine persons, three nominated by railway labor unions, three by the employers, and three by the President. When a threatened railway labor dispute cannot be settled by conference between employers and employees, it must be submitted to the Railway Labor Board. This body has authority to render a decision, but no compulsory power to enforce it. It is, however, a strong factor in the formation of public opinion.

The Need for Administrative Reorganization

The present administrative system of the National Government is the result of 136 years of patchwork and tinkering. As the activities of the Government have been multiplied and the volume of work has been expanded, new departments have been created or new bureaus and divisions added to existing departments with very little care as to scientific distribution of functions so as to achieve the greatest efficiency and economy. The result is that the national administration is characterized by duplication between departments and within departments, by conflicts of authority and overlapping of functions, by misdirected and superfluous effort, by improper lines of administrative authority, by an oversupply of officials and employees, by inefficient and unbusiness-like procedure, and of course by extravagance and red tape.

The need for drastic and comprehensive reorganization to correct these troubles has been pointed out many times by official commissions and private students of administration. In 1921 there was created a Congressional Joint Commission to study the problem of administrative reorganization, and in 1923 this body made a report recommending a sweeping reconstruction of the national administrative system. Congress does not seem disposed to take this report very seriously.

The Personnel Problem

One of the biggest problems of the national administration is what might be called its servant problem. As every one knows, the servant problem, whether on a large or a small scale, involves the selection of the servant, the fixing and adjustment of his compensation, the regulation of the conditions under which he is employed, the control, discipline, and discharge of the servant, and also probably his superannuation or retirement on account of disability.

Having over 500,000 civil servants scattered all over the country, the national government obviously is confronted with an enormously complex and difficult servant problem.

Before 1883 the spoils system was rampant in the national civil service. Political service and political influence were the only recognized means of obtaining and retaining a job. With every change of administration thousands were swept out of office for political reasons and other thousands installed in their places for no other reason than to divide the spoils of victory among the workers of the successful party. It was a calamitous and scandalous situation.

In 1883 after the assassination of President Garfield by a disappointed office seeker had aroused the country to demand action, Congress passed an act establishing the merit system. This act provided for the creation of a classified service in which appointments should be made on the basis of merit as disclosed by an examination or test which so far as practicable should be of competetive character; and persons appointed in such manner should have permanent terms and should not be subject to removal for political reasons.

The act itself ordered the Secretary of Treasury and the Postmaster General to make certain classifications of positions to be subject to the merit system and authorized the President to extend the classified service at his discretion.

To assist the President in classifying positions, in making rules and regulations, and in formulating and conducting examinations the act created the body known as the Civil Service Commission. This body consists of three persons appointed by the President and Senate, and not more than two may be of the same political party.

The Civil Service Commission not only performs the functions mentioned above, but keeps all of the records pertaining to persons who have passed civil service examinations and pertaining to employees in the classified service and watches over the classified

service to see that the rules forbidding political activity and political interference are observed.

In the beginning about 14,000 positions were placed in the classified service. Since that time the classified service has grown until it now includes considerably more than 300,000 positions.

The main purpose of civil service reform at first was to check the spoils system, but in later years other great problems have come to the fore. It has come to be seen that it is not enough to appoint civil employees on a merit basis and to protect them from political removal. In order to prevent extravagance and to secure the highest efficiency care must be taken to establish rates of compensation in conformity with the requirements of a living wage and at the same time to adjust the rates equitably as between different employees and classes of employees so that none will be overpaid or underpaid.

Pains must be taken also to establish a system of promotions which will open the avenues of advancement to high positions and thus encourage employees to put forth their best efforts. And to prevent stagnation and inefficiency provision must be made for the retirement of employees who have passed the zenith of their powers or have become disabled in the service.

During the past ten or a dozen years Congress and the Civil Service Commission have been wrestling with these newer personnel problems even more arduously than with the old problems of the spoils system. Private employees have been learning during the past quarter-century that there is such a thing as scientific management of personnel; that old methods of hiring and firing and bossing have gone by the boards. The national government is just beginning to take a lesson from their book of experience.

The Importance of Administration

The old saw about there being many a slip between cup and lip is perfectly exemplified in the process of government. The legislative branch of government, in response to public opinion, places on the statute books a law designed to put into effect a certain public policy. There it stands, a formal and formidable statement of the will of the people, but as the legislature leaves it it is nothing but paper and ink. It will never be anything but paper and ink until action is taken to translate it into concrete results, and that action must be taken by the administrative branch of government. There are many slips between expression of the will of the people and realiza-

tion of the will of the people, and they are nearly all slips of administration. We can never be sure that the will of the people will be in fact put into effect, and we can never be sure that any public policy is sound or unsound, unless we know that the administration has done its part faithfully and efficiently.

We are supposed to have prohibition in this country, but we have not. We only have a prohibition law. From the administrative standpoint we have never had prohibition because it has never been possible to put that law into full effect. The administrative machinery is wholly inadequate and improperly organized. How then can any one say that prohibition is sound or unsound as a public policy? We have only partial prohibition, and we have no idea of what complete prohibition would mean.

So it is with all other public undertakings. In the long run they all simmer down to a question of administration. Without energetic, intelligent, and efficient administration, government is the most futile of human endeavors. In former times administration was much less important than now, because the functions of government were few and did not touch the daily life of the people to any great extent. But today government is a factor in everything we do or can hope to do, and therefore administration is for us a most vital phase of government.

CHAPTER XVIII

CONGRESS

Congress is the most misunderstood and perhaps the most maligned branch of our national government. The federal courts we regard with awe and wonder. The average citizen feels that there is something deep and mysterious about judicial matters that he can never hope to comprehend. For the presidency we have a profound respect and to its incumbent we pay the devotion in other countries accorded to royalty. But for Congress we have little respect, no praise, and frequently unmeasured condemnation. If we would believe our cartoonists and editorial writers, Congress is made up of demagogues and windbags whose chief concern is self-glorification and picayune politics. Congress is denounced for being slothful, dilatory, and obstructive, and is equally damned for being hasty and impetuous; it is berated for being careless, and is likewise chided for being hesitant and over-cautious; it is accused of reckless extravagance, and at the same time censured for being niggardly.

It is not our purpose here to take up the cudgels in behalf of Congress, although it would be very easy to show that the faults of our national government are no more to be charged to Congress than to the two other departments of our government. The point to be emphasized here is that Congress is what it is, good or bad, because of its position under the Constitution, which we all venerate; because of the party system to which we are all, or nearly all, slavishly devoted; and because the influence exerted upon Congress by the people as a whole develops bad characteristics as well as good ones.

Congress as a Federal Legislature

Congress is not only a national legislature, but a federal legislature as well. This is to be observed in the nature of its powers and the character of its organization. The powers of Congress are enumerated in the Constitution, and it may exercise no powers that are not expressly granted to it or to be fairly implied as necessary and proper to the execution of powers expressly granted. It is

therefore easy to raise the question of constitutionality in connection with nearly all legislation proposed in Congress. This means that Congress must devote a great deal of time and thought to the consideration of technical points of constitutional interpretation, and these issues often obscure the real merits of the question before Congress. The Dyer Anti-Lynching Bill, which was before Congress during a recent session, is a good illustration in point. The debate on this measure and the vote upon it hinged as much (and possibly more) upon its doubtful constitutionality as upon its intrinsic merits. In most other national legislatures such a result could not ensue.

The fact that Congress is a federal legislature also appears in certain features of its organization. The Senate, for example, represents the states as such, and each state regardless of population has two senators. Although state feeling is not as marked as it once was, there are still many issues in which the senatorial alignment is determined by state feeling. Very often a combination of senators, representing a majority of the states but a minority of the people, is able to enact or defeat legislation with little or no regard to the sentiments of the whole people. The House of Representatives, though constructed on a national basis, often exhibits a higher degree of parochialism than the Senate. A representative must be a resident of the state from which he is elected, and by custom also he is bound to reside in the particular congressional district from which he is elected. That being the case, he is generally inclined to regard himself as a delegate from a certain locality and to believe that his first duty is to promote the interests of his locality.

Congress further differs from other national legislatures in that it must operate as part of a check-and-balance system of government. In the exercise of its legislative functions it is subject to checks from both the executive and the judiciary. It, in turn, exercises certain checks upon the executive and the judiciary, but these are not sufficient to bring those branches of government under the control of Congress. Its position is thus one not only of doubtful power, but of doubtful responsibility also. Congress cannot function as a law-making body without the coöperation of the President and, to a certain degree, of the federal courts. Having no means of compelling this coöperation, Congress cannot be held fully responsible for its legislative failures.

We can now picture the position of Congress in our system of government—a national legislature with strictly limited powers, operating within its circumscribed sphere of authority under a

check-and-balance system which diffuses its responsibility and curtails its freedom of action, and at times strongly influenced by the feeling that it represents a collection of states and localities rather than a unified people. That, in brief, is Congress.

The Bicameral Structure of Congress

Congress consists of two chambers, the Senate and the House of Representatives. There is nothing extraordinary about this, as the bicameral principle has been followed in nearly all national legislatures. But there is no national legislature in which the bicameral idea has been applied and developed in the same way as in Congress. The Congress under the Articles of Confederation consisted of a single chamber in which the states were equally represented. This arrangement was generally unsatisfactory, and the convention of 1787 adopted the bicameral principle as a means of placating both the large and the small states. As has been noted above, a compromise was worked out to the effect that the states were to have equal representation in the Senate and representation according to population in the House of Representatives. It is worthy of note, however, that the Senate, in which the states are equally represented, was given certain special prerogatives and placed in an especially strong and independent position as compared with the House of Representatives. No treaty may be made without the approval of two-thirds of the senators present; the House of Representatives has nothing to do with treaty-making. No executive appointment may be made, except for inferior positions, without the confirmation of the Senate; the House of Representatives has nothing to do with appointments. No federal official may be removed from office by impeachment, except by trial and conviction by a two-thirds vote in the Senate; the House of Representatives has sole power to inaugurate impeachment proceedings and bring the defendant to trial, but the final decision rests with the Senate. The members of the Senate have six-year terms, and originally were elected by and responsible only to their state legislatures; the members of the House of Representatives have two-year terms, and have always been elected by popular vote.

It was not without design that the body in which the states have an equal voice was given this unusual independence and these unusual powers. It was intended that Rhode Island should have as much to say as New York about the making of treaties, the appointment of federal officials, and the removal of officials by impeachment.

It was believed that Rhode Island's statehood could be seriously impaired if she did not share equally with New York and all other large states in these matters. We may deplore the fact that Nevada with a population of 77,407 is just as influential in the Senate as New York with a population of 10,385,227; but we should remember that precisely that result was intended by the framers of the Constitution, and that special prerogatives were given to the Senate because such results were expected.

In other national legislatures the second chamber as a rule represents special interests or special classes (such is the case of the House of Lords in Great Britain and the senate in France and Italy), and these are regarded as of much less importance than the interests of the whole people. The second chamber is therefore not only denied every form of exceptional power and privilege, but is actually stripped of all power which might tend to place it on an equal footing with the popular body.

The House of Representatives

The House of Representatives at the present time consists of 435 members. The size of the House is not governed by the Constitution, except for the provision that the ratio of representatives shall never exceed one member for every 30,000 inhabitants. If this exceedingly low ratio of representation were to be adopted the House would consist of nearly 3500 members. But the tendency is in the opposite direction. The present ratio is one for every 225,000 inhabitants, approximately. The size of the House and the ratio of representation are arbitrarily fixed by act of Congress. Until 1921 the size of the House was measurably increased after each decennial census. In that year the usual legislation providing for a reapportionment and an increase in the size of the House was introduced; but owing to a conviction on the part of a majority of the members that the House had become so large and unwieldy that it had ceased to be a deliberative body, this legislation was defeated.

The members of the House of Representatives are chosen by popular vote in their respective states. Congress has prescribed that each member shall be chosen to represent a subdivision of the state, commonly known as a congressional district. Congress decides how many Representatives each state shall have, and the state legislature is then required to divide the state into congressional districts, which according to the law must be substantially equal in

population and consist of compact and contiguous territory. There is no way to compel the state legislatures to adhere to this injunction, and consequently they often draw the lines of congressional districts in such a way as to give the party controlling the legislature more seats in Congress than its voting strength warrants. This is known as *gerrymandering*. As a result of the practice of gerrymandering, congressional districts in many states are grossly unequal in population and so grotesquely distorted in form as to be dubbed "horseshoe" districts, "saddlebag" districts, and the like. The rule of compact and contiguous territory is entirely forgotten. And because there are so many gerrymandered districts the House of Representatives frequently does not represent a majority of the people at all.

The Constitution empowers the House of Representatives to choose its own Speaker and other officers, to make its own rules, and to be the judge of the elections, returns, and qualifications, of its own members. Presumably, the House might choose its Speaker from outside its own membership, just as it does its other officers, but it has never done so. The Speaker is a duly elected member of the House chosen by it to serve as its presiding officer. The only limitations on the rule-making power of the House are the constitutional requirements that a majority shall be necessary to constitute a quorum to do business, that a two-thirds vote shall be necessary to expel a member, that one-fifth of the members present may demand a yea and nay vote, and that a journal of proceedings shall be kept and published. When it comes to determining the elections and qualifications of its own members, the authority of the House is apparently absolute. All disputed congressional elections are settled by the House, and there is no appeal from its decisions. The Constitution specifically states that unless a person is twenty-five years of age, has been seven years a citizen of the United States, is an inhabitant of the state from which he is elected, and holds at the time no other office under the United States, he shall not be qualified to sit in the House of Representatives. No other disqualifications are mentioned. But the House has several times excluded persons who complied with all those requirements and were unquestionably elected by a clear majority of votes in their districts. In 1900 it refused a seat to Brigham H. Roberts of Utah on the ground that he was a polygamist, and in 1918 it refused a seat to Victor J. Berger of Wisconsin on the ground that he had been found guilty of obstructing and embarrassing the government in the prosecution of war. Whether the House is technically right in thus adding to the constitutional qualifications for membership is an academic question.

The Constitution makes it the sole judge of the qualifications of its members, and there is no way of challenging whatever action it may take. It may therefore do as it pleases.

There is another requirement for eligibility to the House of Representatives which is not fixed by the Constitution, by any statute, nor by any action of the House itself. This is the requirement that a member shall be a resident of the district from which he is elected. This is purely a matter of custom, but it has been followed so long that it has crystallized into a rule of practice. Pursuance of this rule tends to accentuate the spirit of localism in the House, and also deprives the country of the services of many outstanding leaders who for various reasons may be stronger in congressional districts other than the one in which they reside.

The Senate

The Senate consists of 96 members, two from each state. Before 1913 the senators from each state were elected by the legislature thereof, but the Seventeenth Amendment, adopted in that year, provided for the election of senators by direct vote of the people of the state. The change in method of election has not effected as much of a revolution in the character of the Senate as was anticipated. The many scandals and abuses formerly concomitant with the election of senators have disappeared or taken other forms, but the Senate remains much the same sort of body as before. It is probably somewhat more closely attuned to public opinion than before, but it still remains a semi-independent, and, on the whole, conservative legislative assembly.

The Constitution provides that the term of office in the Senate shall be six years, and that the terms of senators shall be rotated so that the terms of one-third of the senators shall expire every two years. The Senate is therefore a continuous body. No matter how great a revulsion of public sentiment may occur, only one-third of the membership of the Senate may be changed at one election; and it takes two elections, covering a period of four years, to change a majority of the membership.

The Senate does not choose its own presiding officer. The Constitution provides that the Vice-President of the United States shall be President of the Senate. The Vice-President is an impartial presiding officer and takes no part in the proceedings of the Senate except to cast a vote in case of a tie. The Senate chooses all of its other officers, including a President Pro Tempore to serve in

the absence of the Vice-President and when the Vice-President succeeds to the presidency. With respect to rules of procedure and the determination of the elections and qualifications of its members the position of the Senate is identical with that of the House of Representatives.

The Two Houses Compared

The House and the Senate present a most interesting contrast. The term of office in the House is two years and all members come up for reëlection at the same time. The members of the House are therefore much more sensitive to every gust and current of popular sentiment than the members of the Senate whose term is six years and of whom only one-third have to face their constituents at a given election. A great tidal wave of popular passion may temporarily overwhelm the House, but it is much less likely to sweep a majority of the senators away from their moorings. The senators, then, both individually and collectively, can pursue a more independent course and be more indifferent to current shiftings of popular sentiment than can the members of the House. Certain senators who voted against the Armed Merchantman Bill and the Declaration of War in 1917 would have been buried under an avalanche of negative votes had they come up for reëlection in 1918, but when they came up in 1920 and 1922 the voters had largely forgotten the war and were preoccupied with other issues.

Each senator is elected by the voters of his state at large, while each congressman is elected by the voters of a local sub-division of the state. This gives the senator a great advantage. As the spokesman of the entire people of the state he has greater prestige and influence and authority than the man who speaks for only a small fraction of the people of his state. Not only that; the fact that he is responsible to the entire electorate of the state renders him less dependent upon local circumstances and local cliques. A course of action which makes enemies in one quarter of the state may make a large number of friends in another quarter. Nor is the senator expected to look after the interests of special localities to the same extent as members of the House, and consequently he is free to devote more time and energy to great public questions.

The Senate being a much smaller body affords each member a greater opportunity to achieve eminence and distinction. Its procedure is less formal, there is ample time for each member to

participate in debate, and there are more chances of assignment to influential committees. A senator, if he has any ability at all, always stands out as an individual; but a congressman, no matter how great his ability, is likely to remain an obscure nonentity.

Then the Senate has certain special powers and prerogatives which redound greatly to its advantage. The right of the Senate to confirm the appointments of the President to all except inferior positions has proved to be a great political asset. The Constitution says, "The President shall nominate, and by and with the advice and consent of the Senate, shall appoint—". Soon there grew up in the Senate a practice of refusing to assent to nominations made to fill federal offices in a particular state if the persons named by the President were objectionable to the senior senator from that state, provided he was a member of the President's party. This was known as "senatorial courtesy". When the senior senator was not of the President's party and the junior senator was, this "courtesy" was extended to the junior senator; and when both senators were of a different party from the President it was extended to the national committeeman of the party for that state, or, possibly to certain members of the House, if they were of the President's party. And even when the President is of one party and the majority in the senate of a different party, the rule of "senatorial courtesy" obtains as respects members of the President's party in the Senate. The effect of this practice was to give the members of the Senate control over the Federal patronage in their respective states, if their party was in control of the presidency. This gives the senator a position of priority and power in party affairs in his own state which no congressman can attain.

The Senate gains a great deal of prestige through its power to ratify treaties. The great struggle over the League of Nations in 1919–20 was fought out in the Senate. The House of Representatives had nothing to do with it.

The only point of superiority which the House seems to have over the Senate is in regard to money bills, which according to the Constitution must originate in the House of Representatives. The House does derive a certain advantage from this, but it is sometimes more fancied than real. The Senate upon receiving money bills from the House has full power to amend them, and it has not hesitated to use this power to the limit. It has even gone so far in some cases as to strike out all but the title of the bill and insert a complete bill of its own as an amendment. And the Senate has just as much

power to force its amendments on the House as the House has to force the original bill upon the Senate. There must be a compromise in the long run anyhow.

The Sessions of Congress

Congress meets once each year. According to the Constitution the meeting must begin on the first Monday in December, unless Congress shall by law appoint a different date. This Congress has not done. Unforeseen developments have rendered this date entirely inapplicable to modern conditions. Upon the adoption of the Constitution the old Congress under the Articles of Confederation declared by resolution that the new government should go into operation March 4, 1789. The terms of the President and Vice-President and of all members of the House and the Senate began on that date and expired on the same date two, four and six years later, when the terms of their successors began. This meant that members of Congress and presidential electors must be chosen some time prior to the fourth of March of the odd years. This was eventually settled by an act of Congress fixing the first Tuesday after the first Monday in November of the even years as the day for choosing elected officials. Thus members of Congress elected in November, 1924 would not normally take their seats in December, 1924; for their terms did not commence until March 4, 1925. The first regular session after that date would not come until December, 1925. Therefore, unless a special session should be called, thirteen months elapses between the election of these senators and representatives and the time they assemble for their first session. The session commencing in December, 1925 will continue into the spring or summer of 1926, and is known as the long session. In December, 1926, they are obliged to assemble for a second session, which cannot continue beyond March 4, 1927, the date on which their terms expire, and which is therefore known as the short session. But in November, 1926, there will be a congressional election in which many members may be defeated.

This disjointed and jumbled arrangement of election dates and session dates has several unfortunate consequences. In the first place, a Congress elected on a certain set of issues may be, and quite commonly is, delayed more than a year before it can assemble and carry out its mandate. Meanwhile the temper of public opinion may have changed and other issues may have arisen, with which it was not elected to deal. Congress is therefore nearly always a year or more behind the prevailing public sentiment. Moreover, the

second or short session of Congress, occurring just after the congressional elections, is usually a very lamentable affair. Scores of defeated senators and representatives, called "lame ducks", have to come back and serve from the first Monday in December until the fourth of the following March. These are naturally not in a state of mind to render the best service even though they sincerely try to do so, which a great many do not. Furthermore, the present arrangement does not give Congress enough working time. The long session cannot extend much more than seven months by reason of the on-coming congressional elections in the autumn following its meeting, and the short session is arbitrarily limited to three months. The volume of business to be transacted calls for a long session each year.

What can be done about it? The fourth of March as the date of the commencement of the terms of elected officers can only be changed by constitutional amendment, but Congress has complete control over the other two dates. Congress could easily synchronize terms, sessions, and elections by providing for elections in January or February and sessions to start on the fourth of March. But there are several reasons why Congress is reluctant to do so. Tradition in this country is against elections in midwinter. It used to be argued that the people could not get to the polls at that season; but with the advent of good roads and rapid transportation and the concentration of more than half of our population in cities that argument is no longer good. The real reason now for the hesitation of Congress to change the date of elections is the supposition that the summer and fall months are more favorable for campaigning than the winter months. And the principal reason perhaps for the reluctance to begin the sessions of Congress on the fourth of March is that they would then necessarily extend into the summer, which is not a very pleasant season in Washington. To meet all these objections, resolutions proposing constitutional amendment have at different times been introduced in Congress. The latest of these would advance the dates of the commencement of congressional terms and of the inauguration of the President to the first and third Wednesdays in January respectively, and would require Congress to convene once each year on the first Wednesday in January.

The Process of Legislation

Congressional procedure is intricate and rather difficult to follow, but in order to appreciate the true nature of congressional processes it is necessary to attempt to get some idea of the steps involved in

the passage of a bill. The fundamental steps are the same in both houses. The first step of course is the *introduction* of the measure. Bills may be prepared and introduced by any member, they may be prepared and introduced by a committee, or they may be prepared and introduced by a committee in response to a motion to that effect by an individual member. The next step after the introduction is *reference to a committee.* Both houses have a large number of standing committees for the detailed consideration of measures, and no measure may be taken up until it has been acted upon by a committee. Reference to committees is made by the presiding officer acting according to the provisions of the rules. The next stage is *consideration in committee.* The committee has unrestricted freedom to act on all measures referred to it. It may approve the bill in its original form; it may amend it as it sees fit; and it may completely ignore the measure and fail to make any report on it. When the committee has finished with the measure, it is *reported out and placed upon a calendar.* This constitutes the next stage of its progress. The calendars are simply lists of bills classified according to subject-matter. There is a calendar for money bills, a calendar for public measures of a non-financial character, a calendar for bills of a private or special nature, and so on. Bills are placed on the appropriate calendar in the order in which they are reported from committees. A regular time is set aside for the consideration of each calendar, and measures are taken up at that time in the order in which they appear on the calendar. *Consideration by the main body,* which is the next step, involves the reading of the measure, debate thereon, and the proposal of amendments. In considering a measure the house may proceed in its regular character or may resolve itself into a committee of the whole. Then comes the *vote* on the measure in its original form or as amended.

The measure now goes to the other branch of Congress, where it goes through a similar course of procedure. The other house more than likely introduces a number of changes in the measure. It then returns to the house of its origin, and the question of agreeing to the amendments of the other house is considered. If the decision is in the negative, then what is known as a conference is arranged. The presiding officer of each house appoints three members to constitute a conference committee. The conference committees of the two houses meet and endeavor to work out a compromise. If they cannot agree, they report back to their respective houses and usually are given further instructions as to the stand they shall take. If the conferees agree, they report their agreement to their respective

houses, and if this is accepted by both houses, it is then embodied in the bill, and sent on to the President. If the President signs the bill, it becomes a law; but if he refuses to sign it, he returns it to the house of its origin with a statement of his reasons for disapproving the measure. This house may then proceed to vote on the question of overriding the President's veto. If two-thirds of the members vote in favor of the measure, it goes to the other house, and if it receives a similar two-thirds majority in that body, it becomes a law.

The Party System in Congress

Congress is not only a legislative organ of government; it is a legislative organ whose members are adherents of political parties. Since a political party is an organization whose purpose is to control the government in order to put into effect certain principles to which it is devoted, it is to be expected that when the adherents of a given party are in the majority in the House or Senate, they will take advantage of their superior numbers to dominate the transaction of business in that branch of Congress. This obviously cannot be done without organization and leadership, and in both houses therefore we find a system a party control which profoundly influences the procedure of Congress.

The basis of the party system is what is known as the party caucus. The caucus is nominally just a meeting of all the members of a given party in the House or in the Senate to decide matters which require common action and a united front in that particular body. But it is in reality much more than that. The party caucus has become a permanent and all-powerful institution in both houses. In both houses each party has evolved a definite system of rules and procedure for the caucus and has put it into a position of power from which it can be dislodged only by a general revolt on the part of the rank and file. The caucus nominates the party's candidate for the offices of Speaker in the House and President Pro Tempore in the Senate; it designates the party members who are to be elected to each committee; it decides what, if any, changes shall be proposed in the rules; and it decides how the members of the party shall vote on specified measures. Every member of the party is bound to support the decisions of the caucus, whether he is personally in agreement with them or not. Exceptions are sometimes made to this rule, but not in important matters. A party member who refuses to participate in the caucus or, having participated, refuses to be bound by its decisions, becomes an outcast in party circles and can expect

very little assistance from other members of his party in any matter in which he is interested, and in most cases this is equivalent to political suicide on his part. It can be seen therefore that the caucus of the majority party in either branch has dictatorial power. Controlling a majority of the votes, it can elect its own candidate as presiding officer; determine the number of committees, the number of members on each, and the number of places to be accorded to the minority on each committee; modify the rules to suit its convenience or needs; and jam through legislation which it favors. The minority caucus affords the only means of offering effective opposition to the majority, and it holds sway in the minority party in the same way.

Now the caucus is ostensibly a sort of free-for-all gathering of party members in which every member of the party has an equal influence, but it is actually quite the opposite. Very often the caucus is organized and important decisions made without the new members being invited at all; and if they are invited they are not allowed to take an active part in the proceedings. And of the older members, only a few influential party leaders with long experience and powerful political connections take a prominent part in caucus proceedings.

Very closely dovetailed with the caucus is the committee system in each house. We have seen that every bill must go to a committee, and that the committee may forthwith write its obituary or may report it out in entirely different form. To control legislative processes it is therefore necessary to control committees. Nominally all committees in both houses are elected by vote of the membership, but actually they are hand-picked in caucus. The majority caucus decides the number of committees, the number of members on each, the number of places to be given to majority members, and designates the majority members who are to serve on each committee. The minority caucus then names the minority members for each committee. At the proper time in accordance with the rules these slates are put up in the house and ratified by a formal vote of the membership; and, behold, the committees are elected. Only one rule is followed in making committee assignments, and that is what is known as the rule of seniority. It is a tradition of long standing in both houses that members shall be ranked on each committee in accordance with the length of their continuous service on that particular committee, and the custom is to reappoint them at each session in accordance with the seniority principle. If, therefore, on a certain committee there are fifteen members, say nine majority members and six minority members, the majority member who has the longest record of continuous service on that committee automati-

cally becomes chairman of the committee and other majority members who have served on the committee before are ranked below him in order of seniority. If there are not enough of these to fill nine places, new members will be appointed; and if there are more than enough, those lowest in order of seniority will be dropped. The minority places are distributed in the same way. Departure from this rule is exceptional, and commonly occurs only when a hardy and incorrigible insurgent, such as Senator La Follette, is about to obtain an important chairmanship through the operation of the seniority rule.

Another important factor in the party system is the steering committee. There is such a committee in each house. It is made up of a few outstanding leaders of the majority, and its function is to act as a sort of board of strategy for the majority. It formulates the legislative program for the majority, selects the measures to be acted on at a given session, determines the order of consideration, and many other matters of similar character.

The rules under which business is transacted also constitute an important element in the party system. In each body the rules are formulated by a standing committee on rules, which of course is under the control of the majority caucus. Places on the rules committee are generally reserved for outstanding party leaders of long experience and unimpeachable regularity. The rules committee always has special prerogatives, particularly that of reporting special rules from time to time by means of which the regular order of business may be set aside. It also has a large control over debate.

In the House of Representatives the Speaker is an important factor in the party system. He is the choice of the majority caucus, and is one of the three or four outstanding leaders of his party in the House. He does not even pretend to be an impartial presiding officer. He is chosen to serve the interests of the majority, and uses his powers to that end. The important powers of the Speaker at present are to refer bills to committees, to rule on points of parliamentary law, and to recognize members wishing to address the House and grant them the privilege of the floor. In the Senate the Vice-President occupies the position of an impartial presiding officer, but the President Pro Tempore is a party leader of first importance.

In both houses each party is represented on the floor by an official spokesman called the floor leader. The floor leader of each party is chosen by the party caucus. The function of the floor leader is to act as field marshal of the forces of his party on the floor of the house. He in large measure controls debate and regulates the

order of business. He must keep everybody in line and direct the strategy of his party on the floor. He is assisted by a functionary known as the party whip. The business of the whip is to keep constantly in touch with all members of his party and see that they are present to vote at all times when their votes are needed.

Results of the Party System

The first conspicuous result of the party system is the extent to which it diminishes the importance and influence of the individual member. This is especially marked in the House of Representatives. There the party organization is everything and the individual nothing. The only way an individual can rise to a position of prominence and influence is through the party organization. On party measures no member may address the House without the consent of the floor leader of his party; and if he endeavors to take the floor without having secured this consent, he will not be recognized by the Speaker. No member may introduce a measure of any importance to the party without the approval of the leaders of his party. If he does, it will be buried in the archives of a committee and will never again see the light of day. Being excluded from participation in big affairs, the majority of members are forced to busy themselves with small affairs. Every member who hopes to be reëlected must make some sort of a showing, and the only way he can make a showing is by playing the demagogue. He tries to get jobs for people from his district or state; he mails garden seeds, government publications, and printed speeches to voters throughout his constituency; he tries to get appropriations for post-office buildings, river and harbor improvements, and so on throughout his constituency; and he delivers impassioned speeches on subjects of little consequence or note.

A second result of the party system is the fact that it enables a few men in each house—the Speaker, the President Pro Tempore, the floor leaders, and the chairman of a half-dozen important committees—to dominate Congress. These men are not responsible to the country at large; they are responsible only to the states or districts which elect them. They are not responsible to their colleagues in Congress; they arrive at their seats of power chiefly through the operation of the rule of seniority, and can be dislodged only by an insurrectionary movement. And very often they fall far short of being true party leaders; for very often the real leadership of the party is not to be found in Congress, and the congressional leaders in such a case are little more than parliamentary wire-pullers.

Another consequence of the party system is the grotesque character of debate. This is more pronounced in the House than in the Senate, but it is very manifest in the latter body. When the party system is working smoothly, nearly everything of importance is settled in caucus and committee room. Debate in the House is curtailed as much as possible and often entirely eliminated; while in the Senate, where freedom of debate is unrestricted, debate becomes a curious post-mortem affair not intended to convince senatorial colleagues whose position is already determined past recall, but to appeal to the press and the galleries.

Working as it does through the caucus and the committee system, the party system tends toward secrecy and obscurity of procedure. Publicity does not fully penetrate the committee room and the caucus chamber, and the people can rarely know how or when the real decisions of Congress are made.

Executive Influence in Legislation

The Constitution intended Congress and the Executive to function as two separate and coördinate organs of government, and such legislative power as was given to the President was of distinctly negative character. He was not expected to play an active and positive rôle in the process of legislation. The rise of political parties, unforeseen by the framers of the Constitution, has rendered that arrangement anachronistic. The President is not only the chosen standard bearer of his party, but by virtue of personal prestige and enormous powers is its actual leader. During the political campaign it is the presidential candidates, not the congressional candidates, who make the issues and pledge the party to the adoption of certain policies. And after the campaign it is to the President that the people look for the fulfilment of campaign promises. But the President is not a member of Congress and has no power to take the initiative in legislative matters. He may make recommendations and may veto measures unsatisfactory to him. That, however, is insufficient for the real head of the party. To insure fulfilment of party pledges as he interprets them, he must exercise a constant and continuous influence upon congressional procedure. This he can do only by "wielding the big stick"; that is, by taking advantage of his position and power to coerce members of Congress.

The position of Congress is as difficult as that of the President. It is naturally jealous of its independence and its legislative prerogatives, but at the same time is conscious of the fact the President

is the real leader of the party in power. Party unity and solidarity demand that Congress shall acquiesce in the leadership of the President, while pride and constitutional prerogative dictate that it shall pursue its own course. The result is that Congress vacillates, hesitates, delays, and waits to ascertain the attitude of the President. If the President is a dynamic and determined individual he will soon assert his leadership and force Congress to accept it, but if he is easygoing and unassertive Congress will drift like a rudderless craft because the leaders of Congress are only subalterns in party affairs.

Possible Congressional Reforms

Congress at present seems to be in a transitional phase. The disintegration of the traditional party lines, the development of certain bi-partisan groupings known as *blocs,* and prospective rise of a third party have created many novel and anomalous situations. Certainly the advent of a multi-party system in place of the two-party system would profoundly alter the processes of congressional action and the relations of Congress and the President. Assuming, however, that the realignment of political forces now going on will result eventually in the formation of another two-party system, we may venture to suggest certain reforms that would correct many of the obvious shortcomings of Congress.

The first thing to be done is to reform the basis of representation and the method of election so as to render Congress a truly representative organ of government. This means that the district system of electing members of the House of Representatives must be abandoned or greatly modified. A suggestion that deserves most thoughtful consideration and is worthy of a trial is that large plural-member districts with election by the Hare system of proportional representation, should replace the present single-member districts.

A second reform that can readily be brought about is to change the present sessional and election dates so as to keep Congress abreast with public opinion and give ample time to transact its business properly.

Reduction of the size of the House of Representatives, if it were practicable, would also contribute much to the improvement of Congress.

Certain modifications in the rules, procedure, and internal organization of Congress would also be helpful. The committee system could be improved by the abolition of the seniority rule, the curtailment

of the arbitrary power of committees over legislation referred to them, a reduction of the number of committees, and publication of all committee discussions and proceedings. Modification of the rules so as to speed up legislation and at the same time afford greater freedom of discussion could also be accomplished. Steps could also be taken to cut down the enormous volume of petty legislation of a local or private character. There is no reason why Congress should take up the matter of building a post-office in every village and city in the country before the Post Office department has recommended such legislation or should go into any matter of river and harbor improvement without recommendation of the War department or the Commerce department.

It would perhaps be advantageous to give the President and the heads of departments seats in Congress with the right to participate in debate but not to vote. This would tend to bridge the gulf between Congress and the Executive and would stimulate constructive leadership in Congress.

All of these reforms could be introduced by Congress itself, but Congress is not likely to take any such steps until public opinion forces it to do so.

CHAPTER XIX

THE JUDICIARY

The lack of a national judicial system was in the opinion of Alexander Hamilton the crowning defect of the Articles of Confederation. His views were shared by many others, and there was never any doubt in the minds of members of the Philadelphia convention of 1787 that the new instrument of government ought to make provision for a system of national courts. Upon that general proposition there was substantial unanimity, but there were many differences of opinion as to the organization and powers of the national courts. Consequently Article III of the Constitution, making provision for the national judiciary, is not in all respects as explicit as one might wish.

What the Constitution Provides

Article III of the Constitution undertakes to do six things: (1) to create a national judiciary; (2) to create a Supreme Court and to provide for the establishment of inferior courts; (3) to differentiate between the functions of the Supreme Court and the inferior courts; (4) to determine the tenure and protect the independence of the judges; (5) to determine the jurisdiction of the federal courts; and (6) to define treason against the United States and to place restrictions upon the way in which it shall be proved and punished.

The first two of these result from the declaration that "The judicial power of the United States shall be vested in one Supreme Court and such inferior courts as Congress may from time to time ordain and establish". It is clear from this that there is to be a national judicial system, and that it is to consist of a supreme tribunal and other tribunals to be created by Congress as circumstances may dictate. But note that the Constitution does not even go into particulars with respect to the organization of the Supreme Court. It is reserved for Congress to decide the number of judges on the supreme bench and the manner in which they shall be or-

ganized for work, as well as set up and determine the organization of the inferior tribunals.

In differentiating between the supreme and the inferior tribunals the Constitution is similarly brief and ambiguous. It states the Supreme Court shall have original jurisdiction (meaning that cases shall go to it without going first to another tribunal) in cases affecting ambassadors, other public ministers, and consuls, and cases in which a state shall be a party; in all other cases the Supreme Court is to have appellate jurisdiction (meaning that cases can only go to it upon appeal from a lower court). But it does not say that the Supreme Court must or may be the sole appellate court, or that no case may be finally decided except by the Supreme Court. Congress is therefore left free to regulate the jurisdiction of the Supreme Court as well as of the inferior courts, subject only to the limitation that in all cases except those named it can give the Supreme Court appellate jurisdiction only.

The framers of the Constitution were deeply concerned that the judiciary should be an independent and coördinate branch of government. Though providing that judges should be appointed by the President and Senate, they took pains to specify that all judges should hold office during good behavior (practically for life) and should at stated times receive a compensation which should not be diminished during their continuance in office. Once installed in office the judges of the federal courts were to be free from both legislative and executive interference, and could only be removed by impeachment.

When it came to defining the jurisdiction of the federal courts the framers of the Constitution left some things unsaid. It is made clear that the jurisdiction of the federal courts shall embrace all cases of every kind arising in connection with the Constitution of the United States, the statutes enacted by Congress, and treaties made by the United States. It is equally clear that it is to include all cases affecting ambassadors, other public ministers, and consuls, and to all cases of admiralty or maritime jurisdiction. These cases may go only to federal courts, because the Constitution says that the jurisdiction of the federal courts shall extend to *all* such cases.

The same thing is true of controversies between two or more states, although the Constitution does not say so explicitly. The federal courts are also given jurisdiction over cases between citizens of different states and between a state, or citizens thereof, and foreign states, citizens or subjects. It is not declared that the jurisdiction of the federal courts shall extend to *all* such cases; and in practice

it has been held that the state courts have concurrent jurisdiction in cases of this kind.

The object of defining treason was to place it beyond the power of Congress and the courts to vary the definition of this crime for political purposes. Treason consists only in levying war against the United States, or in adhering to the enemies of the United States or giving them aid and comfort. The only way a person may be convicted of treason is by the testimony of two witnesses to the same overt act, or by his own confession in open court. No conviction of treason shall affect the legal rights of the descendants of the convicted person or shall result in forfeiture of property except during the life of the person convicted.

The Present Judicial System

One of the first acts of Congress in 1789 was the adoption of an act organizing the judicial system and defining the jurisdiction and regulating the procedure of the various courts. This act as amended from time to time is the basic law governing the structure and procedure of the federal courts. At the present time the judicial power is vested in a series of three regular courts and two special courts. The regular courts are the District Court, the Circuit Court of Appeals, and the Supreme Court; the special courts are the Court of Claims and the Court of Customs Appeal.

The District Court is the lowest in rank and the most extensive in jurisdiction. Throughout the United States, Alaska, Hawaii, and Porto Rico there are between eighty and ninety federal judicial districts, established by act of Congress. Sometimes a whole state is included in one district, and sometimes there are several districts in one state. The governing consideration in the formation of districts is the volume of judicial business. In each district there is a federal district judge, and in many districts there are two or three judges. These judges hold regular terms of court and have authority to try nearly every type of case that comes within the scope of the judicial power of the United States. They are courts of original jurisdiction, and not appellate courts. That means that cases begin in these courts instead of coming to them on appeal from lower courts.

The Circuit Court of Appeals is an intermediate appellate court. The United States is divided into nine circuits and in each circuit there are from two to four judges. These judges hold court at

different points throughout the circuit and hear appeals from the District Courts within that circuit. In a great many cases, such as cases between aliens and citizens, cases between citizens of different states, and suits arising under the patent, revenue and criminal statutes of the national government, the decision of the Circuit Court of Appeals is final and no appeal may be taken to the Supreme Court.

The Supreme Court sits only at Washington, D. C. It consists of the Chief Justice and eight associate justices. Its business consists chiefly in hearing appeals from the District Courts and the Circuit Courts of Appeals on questions involving the interpretation of the Constitution of the United States, although certain non-constitutional controversies may be carried up to the Supreme Court.

The Court of Claims sits only at the national capital. It consists of a chief justice and four associate judges. Its business is to consider claims against the United States. It is a rule of constitutional law that the sovereign cannot be sued without his own consent, and therefore no person can sue and get a judgment against the United States in the regular courts. Congress has established the Court of Claims and has provided that it may make awards establishing the right of claimants to payments from the United States, and a lump sum is annually appropriated by Congress for the payment of such awards. If, for example, the United States makes a contract to purchase goods from an individual and then breaks the contract, the individual proceeds in the Court of Claims and gets an award which is paid by voluntary act of Congress and not under compulsion.

The Court of Customs Appeal consists of a presiding judge and four associate judges. It may sit in any of the nine judicial circuits and has exclusive authority to hear appeals from the decision of the appraising officers of the Department of Treasury as to the value of imported goods and the rate of duty to be imposed on such goods.

Working in close association with the federal courts, and yet not as part of the judicial system, are the United States district attorneys and the United States marshals. There are an attorney and a marshal for each judicial district. The attorney is the prosecuting officer for the United States within his district and the marshal is a ministerial officer for the court to serve its papers and execute its judgments. Both district attorneys and marshals are appointed by the President and Senate.

The Kind of Work Done By Federal Courts

If one wants to get an idea of the variety and complexity of the work of our national government he should spend a few days as a spectator in one of the federal court rooms. There arraigned at the bar of justice he will see the counterfeiter, the bootlegger, the white-slaver, the mail bandit, the seller of wildcat securities, and many others who have violated the statutes of the United States; he will see there perhaps a suit for damages between the owners of steamships for causes of action arising on the high seas or the Great Lakes; he will see possibly two great corporations joined in a struggle over the infringement of patent rights with millions of dollars at stake; he will see perchance representatives of labor unions contending against representatives of employers over the issuance of an injunction to restrict the activities of union members engaged in a strike; he will no doubt see an action brought to restrain the enforcement of some statute enacted by a state legislature, on the ground that it is contrary to the Constitution of the United States.

And these are but a few of the interesting things one may observe in the federal court room. There under his very eyes the Constitution of the United States, a mere thing of paper and ink, is given meaning and application to the affairs of everyday life; there all the acts of Congress are construed and interpreted, not hypothetically, but with reference to actual issues; there every official and every private citizen who has duties and obligations under the Constitution and laws of the United States can be brought to account for his acts of omission or commission and be penalized in accordance with the provisions of the law. If one is concerned about the practical side of government, he should indeed take a great interest in the courts.

The Judicial Veto

Reference has been made in earlier chapters to the unique power of the courts in this country to review executive and legislative acts and declare them unconstitutional and null and void. The courts thus have an absolute veto upon the other branches of government, and their will in the final issue is the supreme will of the government. It would be interesting to see how the courts came to acquire this power and how it has been used at various periods of our history, but we must content ourselves with a consideration of its far-reaching political implications.

Every one who is at all acquainted with the Constitution of the United States knows that its language is so broad and in certain sections so ambiguous that it is easy to raise an issue of constitutionality with reference to almost any piece of legislation and with reference to a great many executive acts. A constitutional lawyer who cannot work up a brief that will take almost any question of governmental power and procedure to the Supreme Court of the United States is not worth a fee. A good example of this is afforded by the recent case of the charter of the city of Cleveland, which was adopted by an overwhelming vote of the people and pronounced valid and constitutional by the supreme tribunal of the state, but was taken to the Supreme Court of the United States by an eccentric attorney on the perfectly fantastic allegation that it was destructive of our federal system of government. The ease with which the constitutional issue may be raised, means that practically every controversial question in this country may be carried to the courts for final settlement. And that means that the courts and especially the Supreme Court of the United States, willy-nilly, are cast into the vortex of political controversy.

Now for the past half-century in this country there has been a controversy of ever increasing intensity and bitterness over the powers of government in relation to private rights. Persons advocating various social and economic reforms have been demanding extensive governmental action to regulate and control the use of property and personal freedom so as to correct the many abuses which are supposed to arise in connection with unrestrained individualism. And on the other hand vested interests of all sorts have stubbornly resisted every extension of governmental power at the expense of private rights and individual freedom. This controversy has naturally been taken to the courts and particularly to the Supreme Court of the United States. During the past three or four decades we have had a series of monumental decisions with regard to workmen's compensation laws, employers' liability laws, minimum wage laws, railroad regulation laws, public utility laws, child labor laws, and so on, in which the Supreme Court has attempted to say how far Congress and the state legislatures may go in restricting private rights in order to promote public health, safety, morals, and that indefinable object which the reformers call social justice. Giving the Court full credit for honesty of purpose, it is nevertheless true that it has in general inclined toward a narrow, literal, and legalistic interpretation of the Constitution, which has favored private rights. This naturally has aroused the hostility of that large and growing element of our popula-

tion which is demanding constantly more and more governmental restriction of private rights. Time and again the American Federation of Labor has thundered forth its denunciations of the Supreme Court and demanded that the power of the Court to declare laws unconstitutional be curbed. The La Follette platform of 1924 made this one of the major issues and demanded "the abolition of the tyranny and usurpation of the courts, including the practice of nullifying legislation in conflict with the political, social or economic theories of the judges".

Thus the issue is joined between the radical and conservative elements of our population. To the conservative, any one who suggests a modification of the judicial veto is a dangerous radical, if not an incipient communist. To the radical, any one who defends the judicial veto is a hopeless reactionary. Both are grossly self-deceived. If the radicals ever get control of Congress and the presidency (and this is not as unlikely as many imagine), they can and doubtless will pack the Supreme Court with judges favorable to their point of view. Then they will have no cause to resent the judicial veto; it will indeed become their chief bulwark and support. The conservatives will then have an opportunity to denounce "the oppression and tyranny of the courts" and to demand that the judges be restrained from construing the Constitution according to their political, social, and economic theories. It all depends upon whose ox is being gored. Just at present the radical ox is being gored, but there is no assurance that the conservative ox will not come in for a good goring in the not distant future.

Thoughtful Americans should read the handwriting on the wall. If we wish to keep our judges above the realm of political controversy, we must modify the judicial veto. If the Supreme Court by a vote of 5 to 4 can interpret the Constitution so as to foster and conserve the interests of one class or one party, it can by an equally narrow margin interpret the Constitution so as to destroy those interests, and promote the interests of another class or party. And we may as well not delude ourselves into supposing that this possibility would be overlooked by a labor government any more than by a capitalistic government. The suggestion that the Constitution be amended so as to call for an extraordinary majority in the Supreme Court in order to declare a law unconstitutional is a very mild and reasonable one, and ought to have the support of all who want to see the independence and prestige of our judiciary maintained.

Use of the Injunction in Labor Disputes

Another thing which has drawn the federal courts into the arena of political controversy is the use of the writ of injunction in labor controversies. An injunction is an order issued by the court commanding certain persons to refrain from acts they are about to commit. Disobedience of an injunction is contempt of court, and contempt of court may be punished by a summary decision of the judges without a jury trial. When a strike occurs in any large industry, and especially in industries affecting interstate commerce, the employers and sometimes the United States Department of Justice, are likely to apply to a federal court for an injunction restraining the striking employees from committing certain acts which are alleged to endanger the rights and property of the employers or the public.

This is deeply resented by the laboring classes, who come to feel that the Government is arrayed against them and on the side of their employers. It is also contended that these injunctive orders are issued by the courts, arbitrarily and without a fair hearing on both sides; that they forbid acts which are lawful and harmless; that they are so vague and sweeping the employees can do practically nothing without being in contempt of court; and that they enable the employer to take undue advantage and gain his point whether he be right or not.

Without discussing the correctness of these charges, we may say with certainty that the feeling of organized labor on this subject is so strong that there can be no doubt that one of the first acts of a labor government in this country would be to strip the courts of all power to issue injunctions in labor disputes. It is unfortunate that such is the case, for the injunction is a very important and necessary adjunct of judicial procedure. Only a very small proportion of the total number of injunctions issued have anything to do with labor controversies; and it is to be regretted that indiscretions and abuse of power on the part of a very few judges have brought the injunction into disrepute with so large an element of the people. In the Clayton Act, adopted in 1913, Congress endeavored to restrict the use of the injunction by the federal courts so as to meet the objections of organized labor, but the subsequent interpretation of this act has shown the need of still further legislation.

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PART IV

STATE GOVERNMENT IN THE UNITED STATES

CHAPTER XX

THE WORK OF STATE GOVERNMENT

THERE was a time in this country when people were more loyal to their states than to the national government and when they conceived the work of state government to be of more vital importance to the individual than that of the national government. But with the passing of the years there has come a great change. The territorial expansion of the country has been tremendous; the number of states has been practically quadrupled; the newer states have come into the union without any tradition of independent statehood; and the profound transformation of the social and economic life of the country during the past century has greatly increased the necessity for national action and has forced the national government to take on many functions which at the time of the founding of the government it was not supposed to have. These developments have had the effect of very largely transferring the interest of the people from state to national government and of obscuring the importance of state government.

The Federal Functions of the States

He who would understand the American system of government must never lose sight of the fact that it is based upon a union of states. Upon this union the national government is founded, and out of this union flow the peculiar characteristics of state government. In an earlier chapter we have noted the activities carried on by the national government in order to preserve our federal union and to promote its successful operation; and we must now turn our attention to state activities which are directed to the same end.

Without a doubt the most vital work of the states with reference to the operation of the federal government is the nomination and election of presidential electors and members of Congress. The Constitution leaves these matters almost wholly to the states. Congress has authority to make certain laws on these subjects and to alter state legislation; but it has not used this power to take the

regulation of national elections out of the hands of the states, and probably could not do so. The state legislatures are given the right to determine how presidential electors shall be chosen; and the Constitution specifically stipulates that the qualifications for voting for members of Congress shall be the same as for voting for members of the most numerous branch of the state legislature, which in effect leaves the regulation of the federal suffrage to the states. By act of Congress the states are given authority to establish congressional districts for th election of members of the national House of Representatives, and to revise and alter the size and boundaries of such districts. There is no national law regulating the nomination of candidates for national offices, and many eminent constitutional lawyers have doubted whether Congress would have authority to enact such legislation. In practice the states determine whether candidates for national offices shall be nominated by conventions, by direct primary, by petition, or by any other system; and they also have power to determine how delegates to national nominating conventions shall be chosen. It is easy to see, therefore, that the character of the national government is deeply influenced by the way in which the states perform these vital electoral functions; and if the states should refuse to perform them at all, it is difficult to see how the national government could go on.

The states also perform important functions in connection with the amendment of the Federal Constitution. Every amendment, after passing Congress, goes to the states and must be ratified by the legislatures of three-fourths of the states before it can become effective. That means that thirteen states regardless of population can block any proposed amendment. Or, to put it in another way, the fundamental law of this country cannot be changed without the consent of an overwhelming majority, not of the people but of the states.

The states have important responsibilities in the enforcement of the Constitution and the statutes of the national government. All state officials from the highest to the lowest are sworn to uphold the Constitution of the United States; and the laws and treaties of the United States made in pursuance of the Constitution are the supreme law of the land and the law-enforcing officers of every state are bound thereby. A city policeman cannot refuse to arrest counterfeiters, bootleggers, and postal thieves because they are violators of federal law and not of state law. A county sheriff cannot refuse to summon a posse to run down railway mail bandits because they have committed a federal crime for which they can-

not be tried in state courts. The truth of the matter is that state officials are almost as important a factor in the enforcement of national laws as federal officials, and without the active coöperation and assistance of state officials the national government would be confronted with almost insuperable difficulties in law enforcement.

The Operative Functions of the States

The functions whereby the machinery of state government is kept in operation are very similar to the corresponding functions of the national government. First in order comes the function of providing, regulating, and conducting elections for the choice of state officials and for the expression of the will of the voters on state issues. This is an unusually important function in state government because of the very high proportion of state officials chosen by direct popular election. In the national government only presidential electors, senators, and representatives are chosen by popular vote, but in the states popular election is used to choose the members of the legislature, the judges of all or nearly all of the courts, the governor, the heads of the principal administrative departments and offices, and the more important county, town, and city officials.

Next in logical sequence comes the function of filling the non-elective positions. The appointing power in the states is not concentrated in the hands of the chief executive, as in the national government, but is divided among a large number of different officials. As a result appointing procedure in the states is more complex than in the national government. Only a few of the states have made any progress in the direction of civil service reform, and consequently the work of civil service commissions does not figure largely in the operative functions of state government.

In matters of finance, which constitutes one of the principal operative activities in all governments, the states do not differ fundamentally from the national government. Their sources of revenue are somewhat different as a rule, but their methods of procedure are much the same. They levy and collect taxes, appropriate and disburse funds, keep accounts and records in quite the same way as the national government. Practically the same thing may be said of the management of state institutions and state property.

The one operative function that is peculiar to state government in this country is the regulation and control of local government. Counties, towns, and cities are political subdivisions of the state in which they are located. Such local units serve two purposes:

(1) they enable the people of the particular locality to manage for themselves such public affairs as may be of importance to that locality only; and (2) they act as agents of state in the enforcement of state and national laws. Provision for institutions of local government is made in the constitution and laws of the state, and in populous states with many local subdivisions this is one of the most burdensome, as well as one of the most important, tasks of state government.

The Service Functions of State Government

The services rendered by state government touch every phase and condition of human life. The most elementary and basic relations of man to man and of man to society come within the purview of state government. Except in connection with powers delegated to it, the national government has no authority to define crimes and provide for their punishment; the function of regulating and controlling social relationships belongs preëminently to the states. It is by state law that the acts which shall constitute murder, arson, assault, rape, robbery, embezzlement, forgery, and so forth are determined; and it is the business of the states to provide the punishment for these acts. All fundamental civil rights are created by state law. The states determine the rights which one may have in relation to real estate and personal property; how title to property must be acquired and how it may be transferred; and by what procedure one may vindicate his property rights. The states decide for what acts a wronged person may sue the person who has wronged him and recover money damages. The states decide what is necessary to constitute a valid contract and how such contracts may be enforced. The states regulate marriage and divorce and fix the mutual rights and obligations of husband and wife, parent and child, guardian and ward. To put it briefly, those contacts between the individual and other individuals which deeply affect the character of society are mostly subject to the regulation and control of state government, the national government having power to intervene only when the states disregard some of the restrictions of the Federal Constitution, such, for example, as the Fourteenth Amendment which forbids the states to deprive any person of life, liberty, or property without due process of law.

Hardly less important than the foregoing are the functions of the states in the control and regulation of commercial, industrial, and professional life. Except that they may not invade the domain of

interstate commerce, the states have full authority over commerce, industry, and professional activity within their own borders. All corporations, whether for business or other purposes, derive their existence and their powers from charters granted by the state governments. The states control and regulate the intra-state business of railways and other common carriers; all banks and trust companies, except those which are part of the national banking system, are subject to exclusive state control and regulation; the insurance business is governed by state laws and regulations entirely; the law governing the use of bills, notes, checks, and other forms of negotiable paper is exclusively under the jurisdiction of the states, and the same thing is true of the law with regard to sales, agency, and many other aspects of commercial life. We have no national code of commercial law and can have none so long as the present scheme of distribution of power between the states and the national government endures. Within their own boundaries the states have exclusive authority to take action to prevent monopolistic combinations in restraint of trade, stock-watering, fraud, price-manipulation, and various other types of unfair competition. Practically all professions and many skilled trades are subject to state control. No one may become a teacher, lawyer, doctor, dentist, nurse, pharmacist, public accountant, barber, plumber, or stationary engineer without a license or permit issued by his state government; and in order to continue in his profession or vocation he must comply with the laws and regulations of the state with regard to that profession.

Closely allied to the functions of the states in the field of commerce and industry are their functions with respect to labor, labor conditions, and labor relations. This field of action belongs peculiarly to the states. By legislation requiring the installation of safety devices upon dangerous machinery, requiring adequate ventilation and sanitation, requiring provision for protection against fire, the states have endeavored to insure safe and healthful working conditions. By laws forbidding the employment of immature children, limiting the hours of labor for women and children, and fixing minimum rates of wages for women and children many of the states have undertaken to prevent the exploitation of the helpless and to safeguard the health and well-being of those whose lives are vital to the future of society. By laws providing for the compensation of workers injured in industrial accidents the states have tried to offset the hardships and privations when a bread-winner is injured or loses his life. By establishing and operating free employment bureaus various states have attempted to minimize the evils

of unemployment and to perform a valuable service for both employers and workers. By establishing agencies for the adjustment of labor disputes the states have tried to prevent the enormous waste and to overcome the serious evils incident to industrial conflict. The foregoing are typical of the far-reaching activities of the states in the interest of labor.

Another field of governmental service that is quite largely occupied by the states is that of the protection and promotion of public health. The burden of the fight against disease and insanitary conditions of life falls to the states and their local subdivisions. Practically every state now has an elaborate public health code providing for the suppression and control of contagious and communicable diseases, forbidding the contamination of streams and lakes, regulating the manufacture and distribution of foodstuffs, requiring the inspection of factories, tenements, and sweatshops. Most of the states also maintain laboratories for the conduct of research as to the causes of diseases and their dissemination. Virtually all of the states now operate hospitals and sanatoriums for the care and treatment of the sick, particularly the indigent sick. All these activities are supplemented by similar activities carried on by counties, towns, and cities under the control of the state.

Another prominent service of the states is the provision of orphanages, asylums, almshouses, reformatories, penitentiaries, and other institutions for dealing with dependent, defective, and delinquent members of society. This work used to be left almost entirely to counties, towns, and municipalities; but in recent years it has been coming more and more under the state government directly.

Education is a service which belongs entirely to the states and their local subdivisions. The public school system from the primary grades to the university is supported, regulated, and managed by the states. Of late years the states have been branching out into many new fields of educational activity, such as university extension, vocational guidance, and evening schools.

Since the advent of the automobile, the construction and maintenance of highways has come into especial prominence as a function of state government. In former times the construction of roads and highways was considered to be essentially a local matter, but experience has taught that a unified, properly planned, and well administered system of highways cannot be built and managed by a number of disconnected units of local government. For that reason the states have been obliged to go in for road-making on an ex-

tensive scale, and in some states the state highway department is the largest and most active department of state government. The states not only build highways; they license automobiles and to a measure try to regulate traffic on state highways.

Nearly all the states undertake to conserve and protect fish, game and other wild life within their boundaries, and to that end they forbid hunting and fishing without a license, establish restricted seasons for various types of fish and game, prescribe the amount of fish or game that may be taken by any one person, maintain game preserves and fish hatcheries, and engage in many other activities of similar character.

All states carry on numerous activities for the promotion and assistance of agriculture. Agricultural experiment stations are maintained in various parts of the state; steps are taken to eradicate and control plant and animal diseases; the breeding of livestock is regulated by law; the manufacture and sale of fertilizers and likewise the sale of seeds and nursery stock is subjected to state control; marketing bureaus are maintained for the assistance of the farmer; some of the states have entered upon extensive irrigation projects.

Mining, lumbering, and fishing are other industries which are frequently assisted by services rendered by state government.

The foregoing summary of state services is by no means complete, but it will perhaps serve as a sort of panoramic picture of the scope of state government and the place it occupies in our scheme of government.

The Legal Position of the State

Except as limited by the Constitution of the United States, the states have full power to do anything and engage in any activities they please. The Constitution of the United States operates to add power to the national government and subtract power from the states. The states, therefore, have what is known as residuary power, i. e., all power not taken away from them by the Federal Constitution. To ascertain the legal position of the states, then, it is necessary to note the principal limitations imposed upon the states by the Federal Constitution.

The first of these has to do with foreign or external relations. The states are deprived of all power to make treaties with foreign countries or with one another, without the consent of Congress.

They may not declare war, keep troops or ships of war in time of peace, or engage in war unless actually invaded or in imminent danger therof.

A second limitation has to do with the taxing power of the states. They are forbidden to tax exports, and they may not levy any taxes upon imports except to defray the necessary cost of administering inspection laws. They may not levy any tonnage duties. They may not levy taxes upon interstate commerce, and they may not tax the necessary agencies and instrumentalities of the national government.

A third limitation relates to the monetary system of the country. The states may not coin money, issue paper money, or make anything but gold and silver coin legal tender in payment of debts.

A fourth limitation is that the states may not in any way impede, interfere with, or directly regulate interstate or foreign commerce.

A fifth limitation is that the states may not pass any law impairing the obligation of contracts.

A sixth limitation is that the states shall not pass any bill of attainder or *ex post facto* law.

The last and most sweeping restriction of all is to be found in that provision in the Fourteenth Amendment which forbids any state to deprive any person of life, liberty, or property without due process of law, to make or enforce any law abridging the privileges and immunities of citizens of the United States, or to deny to any person within its jurisdiction the equal protection of the laws.

It would take a bulky treatise on constitutional law to explain the precise meaning and effect of these limitations on the states. The point to be chiefly emphasized in this connection is that these limitations are for the most part couched in broad, if not ambiguous, terms, which are capable of almost indefinite expansion by judicial interpretation. It is not possible, therefore, to determine what the states may and may not do from a mere reading of the Constitution. The only sure guide to state powers is the decisions of the Supreme Court of the United States. During the past fifty years there has been an unmistakable tendency on the part of the Supreme Court to construe these limitations broadly, particularly those contained in the Fourteenth Amendment. For that reason it is difficult to speak accurately as to the legal position of the states. The one power of the states which perhaps is most shrouded with doubt is what is known as the "police power." In earlier chapters it has been pointed out that the primary purpose of government is the subordination of tne individual to the community in order to promote the welfare of all. Such being the case, it goes without saying that every

government must have power to make and enforce laws restraining the individual and curbing his freedom to conduct himself and use his property as he pleases. This power is called the "police power". Under our federal system the police power is among the powers not expressly delegated to the national government, and therefore presumably reserved to the states. But since the states may use the police power only in accordance with the limitations imposed upon them by the Constitution, and since there is scarcely any exercise of the police power which may not be challenged as a violation of the "due process" clause of the Fourteenth Amendment, it would seem that the police power of the states has been placed in the keeping of the Supreme Court of the United States. The significance of this fact becomes fully apparent when one realizes that more than half of the activities of state government are based upon the police power.

CHAPTER XXI

THE EXECUTIVE

I. THE GOVERNOR

No public office in the United States has been molded and fashioned by changing political conditions as much as the office of governor. In colonial times the governor was the mainspring of the government, being at one and the same time chief executive, head of the highest court, controlling member of the upper branch of the legislature, commander of the military forces, and head of the established church. During the Revolution, however, the office of governor was shorn of most of its former powers and prerogatives and placed in a position of humble dependence upon the legislature, the governor himself being chosen by the legislature in a majority of cases. But the eclipse did not last long. In a few years popular election released the governor from bondage to the legislature, and gradually many of the former powers of the office were restored. Throughout the past century there has been a constant decline in the power and prestige of state legislatures, and with this has come a progressive enhancement of the authority and prestige of the governor. Today the office of governor stands out as the most important single factor in state government. Although not all of the once regal powers and attributes have been recovered, the governor in modern times has fallen heir to the function of political leadership and through that function wields a tremendous influence that was not enjoyed by his colonial predecessors.

How Governors Are Chosen

In all of the states except Mississippi the governor is chosen by direct vote of the people. The election of the governor is of course a party contest, and the candidates are the nominees of political parties. In a majority of the states now political parties are obliged to nominate their candidates for governor by the direct primary, although a few states still cling tenaciously to the old con-

vention system of nominations. Under the primary system a person who desires to be his party's candidate for governor (or any other office for that matter) must file in the office of a designated state official a petition containing the signatures of a certain number of qualified voters belonging to his party. If this petition is found to be regular in every way and the number of signatures is adequate, the name of the person presenting the petition is placed on the primary ballot of his party. On the day of the primary election the voters of this party go to the polls and choose from among the names of the persons whose names appear on the primary ballot the one whom they wish to be the nominee of their party for governor. In most states the individual who has received the highest number of votes is declared to be the nominee; but there are a few states which require the person nominated to receive a majority of all the votes cast, and if no one has received such a majority at the primary election, the two or three standing highest are obliged to run again at a second primary election.

Under the convention system of nomination the party's candidate is selected by a state convention made up of delegates chosen by county, city, and district conventions. There are, however, some states which provide for the selection of delegates to state conventions by direct primary elections.

Any qualified voter, according to the constitutions of most of the states, is privileged to occupy the office of governor. Sometimes it is prescribed that a person to be eligible for the office of governor must have been for a stated number of years a citizen of the United States, must have resided in the state a certain number of years, and must have reached the age of thirty years. But as a rule there are no educational, religious, or property qualifications.

The Governor's Term of Office

About half of the states fix the governor's term of office at two years, and of the remainder all except one provide for a four-year term. The trend appears to be in the direction of the longer term. It is coming to be apparent that the two-year term does not afford sufficient time for a governor thoroughly to familiarize himself with the duties of the office and carry through his pre-election program. There are several states which forbid the governor to succeed himself in office, but in most of the states the governor may hold office as long as he can be reëlected.

The Governor as Chief Executive

Nominally the governor is the chief executive of his state in the same way that the President is chief executive of the national government, but actually the position of the governor is very different from that of the President. The administrative organization of the national government might be likened to a pyramid with the President in a position of supreme authority at the top. In the states there is no such concentration of administrative authority. Although state constitutions commonly paraphrase the language of the national constitution in declaring that the executive power shall be vested in the governor and that the governor shall take care that the laws be faithfully executed, the administrative structure of state government and the attitude of state courts toward executive power are so different that the governor can scarcely be regarded as a chief executive at all.

The heads of the principal executive departments and offices in state government, such as the secretary of state, the state treasurer, the attorney general, and the state auditor, are as a rule elected by popular vote and are not subject to removal by the governor. These officials, consequently, feel that they are directly responsible to the electorate and pay very little attention to the governor's nominal authority over them. To make matters even worse, they are very often of the opposite political faith from the governor and are disposed to make use of their administrative independence to annoy and discredit the governor. State constitutions and statutes now give the governor power to appoint a great many administrative officials, but even over these the administrative authority of the governor is slight as compared with the authority of the President over his administrative subordinates. The rule that the power to remove is incident to the power to appoint has not been developed to any great extent by the state courts, and therefore, even though the governor has the power of appointment, he has no power to remove unless the same be expressly conferred upon him by the constitution or statutes of the state. It is also the rule in many states that if the term of office is fixed by the constitution of the state, the governor may not remove an incumbent whom he has appointed until the end of the constitutional term. A conspicuous example of this occurred in the state of Ohio in 1925 when the governor made serious charges against the state highway commissioner whom he had appointed, and tried to oust him from office. The latter stood upon his constitutional prerogatives and defied the governor to re-

move him, and as a result the people of the state had to put up with dissension and uncertainty in highway administration until the end of the commissioner's term.

Not having the power of removal to any great extent and having only a very limited power of appointment, the governor's power of administrative direction is of course very materially circumscribed. Whereas the President can give specific and binding orders to any or all of his administrative subordinates, the governor's administrative orders are quite often treated with indifference and contempt. The same thing is true of the governor's power to issue rules and regulations binding upon the various offices and departments; indeed, the state courts seem inclined to hold that the governor has no such authority unless it has been expressly conferred upon him by the constitution or by statute.

Thus we see that the governor is a chief executive in name only. Instead of a single pyramid with the governor at the top, state administrative systems are composed of a series of coördinate pyramids with the governor at the top of only one and with very uncertain control over that one.

The Governor's Legislative Powers

It is in the field of legislation that the governor comes to his own. All the states except North Carolina require that all bills passed by the legislature shall go to the governor for his approval. In case he disapproves of the measure he may veto it and return it to the house of its origin. It may not then become a law unless it is repassed by the legislature. Some few states allow the legislature to repass vetoed bills by a simple majority, but most of the states require an extraordinary majority for repassage varying from three-fifths to two-thirds. Three-fourths or more of the states now give the governor power to veto single items of appropriation bills, and a few give him the power to veto single items of all bills. The item veto is a very potent weapon in the hands of the governor, and one which the President does not enjoy. When a bill comes back from the governor with only a few items disapproved, it is quite difficult to marshal a majority to repass those items. They may be of concern to only a few members of the legislature, and the majority under such circumstances will be quite content to let the veto stand. Or they may be of such character that, even though they command the interest of a majority of the legislature, they are exceedingly difficult to defend when standing by themselves. In most states,

also, the most important appropriation bills seldom reach the governor until after the adjournment of the legislature, thus leaving him free to use his item veto power without any possibility of "come-back" on the part of the legislature. By use of the item veto it is possible for the governor to punish members of the legislature who oppose his legislative program by singling out and killing items in which they are particularly interested. Many a member of the legislature has come to see eye to eye with the governor through fear of losing an appropriation for his own county or section.

The governor's power to address the legislature by regular and special messages has developed along the same lines as the message power of the President. The governor's message now is not so much a means of giving information to the legislature or appealing to the legislature for action as it is a means of going over the legislature to the people of the state and of appealing to them to support the governor and bring pressure upon the legislature. The development of the executive budget system has greatly enlarged the message power of the governor. Under the executive budget system the governor formulates estimates of the sums of money needed to operate each branch and department of the state government for the ensuing year or two years, and these are submitted to the legislature with a message in which the governor sets forth the reasons for the conclusions reached and urges the adoption of his financial program. The legislature may disagree with the governor on many points, but the fact that the governor has been able to bring his case to the attention of the people of the state and has been able to outline the financial policy which he thinks should be followed forces the legislature to pay close attention to the governor's recommendations.

The governor's power to summon extraordinary sessions of the legislature has also accrued to his advantage. Many state constitutions now specify that when called in extraordinary session the legislature may consider the business submitted to it by the governor and nothing else, or may consider nothing else until it has finished the business submitted by the governor. This of course gives the governor power to convene the legislature and force it to concentrate its attention upon his own legislative program. And even though there be no special constitutional provision limiting the freedom of action of special sessions of the legislature, the fact that such sessions are called by the governor and that he states the purpose of the session tend to focus public opinion on the matters included in the governor's legislative program, and this naturally has a powerful influence upon the legislature.

Miscellaneous Powers of the Governor

The two most conspicuous powers of the governor in addition to those mentioned are the power of pardon and the military power.

The governor is generally given the power to pardon offenses against the laws of the state, but this power is often more restricted than the pardoning power of the President. The governor usually may not pardon until after conviction, and is frequently forbidden to pardon in cases of impeachment or treason. In several states the governor must exercise the pardoning power in conjunction with a board of pardons. Sometimes the board has only advisory power; sometimes the governor may pardon only upon recommendation of the board; and sometimes the board has the full power of pardon and the governor merely sits as one of its members. There are one or two states in which the governor does not participate at all in the granting of pardons. The power to pardon commonly includes the lesser power to remit fines, suspend sentences, and modify the punishment inflicted by the sentence. Many governors have complained that the pardoning power puts a duty and a responsibility upon the governor that are inconsistent with his other functions and that constitute an undue burden. These governors have almost invariably recommended that the power of pardon be transferred to some sort of special tribunal.

The governor in all of the states is designated as commander-in-chief of the militia, and usually has complete discretion in calling out the militia. There are a few states in which the governor has full discretion in calling out the militia only when the legislature is not in session. The militia is not a body of professional soldiers. It is made up of civilians who do not give up their civilian occupations for military service. The Federal Constitution forbids the states to maintain full-time, professional military forces except in time of war. Although the governor is commander-in-chief of the militia, he exercises these powers through an officer known as the adjutant general.

Executive Leadership

The Twentieth Century has summoned the governor to a new rôle and an enlarged sphere of action. The great problems of this age call for more aggressive and inspiring leadership than our state legislatures have been able to supply. Our state legislatures have produced no Websters, Calhouns, and Clays, nor any Lodges,

Borahs, and La Follettes. The mantle of leadership has therefore fallen upon the governor, and the great governors of recent times have been not so much executives as political crusaders and prophets of a new political order. The people look to the governor for political leadership, and they care little about his administrative talents or business ability. The governor must advocate extensive reforms; he must pledge himself to obtain legislation putting those reforms into effect; and he must, if need be, take his war club in hand and bludgeon the legislature into acquiescence. That is the sort of governor the people want, and it is the only sort of governor in whom they repose great confidence. To a strong, magnetic, and energetic political leader the governorship of any state is an opportunity to make himself a national figure and to win a place on the national political stage.

II. STATE ADMINISTRATIVE SYSTEMS

In the early part of the Nineteenth Century when our state governments were taking form, the administrative functions of state government were few and extremely simple. The enforcement of civil and criminal law, the assessment and collection of taxes, the keeping of records, and the maintenance of the militia comprised the principal activities of state government. For these relatively simple affairs very little administrative machinery was required. But as population has increased and human relations have become more complex, it has been necessary for state governments to assume many additional functions and enormously to expand their administrative machinery. In so doing, however, they have not followed a consistent and intelligent plan. From time to time as new needs have arisen new offices have been tacked on here, new departments added there, new boards and commissions set up indiscriminately and without much regard to sound principles of administrative organization. The result is that state administrative organization today is a disconnected, ramshackle, chaotic affair resembling nothing so much as the old-fashioned jig-saw puzzle.

Chaotic Administrative Organization

The foundation of all subsequent troubles in state administration was laid when the framers of the first state constitutions, because of their indignation at the outrages they had suffered at the hands of colonial governors, stripped the office of governor of all of its ad-

ministrative powers and prerogatives. In colonial times there was a highly unified and centralized system of administration, practically all the officers of state being appointed by and subject to removal by the governor. This latter fact constituted one of the principal grievances of the colonists; but they apparently failed to perceive that there would be a great difference between centralized administration under a governor responsible to the British Crown and centralized administration under a governor responsible to the people of the state. The first state constitutions transferred to the legislature most of the administrative powers that had formerly belonged to the office of governor, including the power of appointment and removal. Then, as state legislatures began to fall in public esteem, provision was gradually made for the selection of the governor and most other administrative officials by direct popular vote; and in time it came to be an axiom of American politics that there could be no democracy unless the people were permitted to vote for all their officials from the highest to the lowest.

So it happened that state administrative systems, instead of being organized as a group of closely correlated and functionally articulated offices and departments under the effective control and direction of the chief executive, came to consist of a confusing array of disrelated and disconnected offices, departments, boards, and commissions having no common responsiblity to any superior executive official. The governor, the attorney general, the secretary of state, the state auditor, and so on, were all placed on the same level, independent of one another and responsible only to the electorate. The governor, instead of being a general superintendent or business manager, became one of several coördinate administrative heads.

As new offices and departments were created this principle of decentralization was carried to the point of absurdity. Instead of endeavoring to group related activities together under one head, each new activity was given over to a separate and independent agency created for that purpose. And because it was felt that single-headed offices and departments were untrustworthy or were unsuited to certain types of work, it became the fashion to establish boards and commissions whose members were elected or appointed on an independent basis and often for rotating or overlapping terms. In the end the state administrative system came to be a veritable crazy-quilt of disconnected, overlapping, conflicting, unsupervised, and largely irresponsible agencies of administration. The number of such independent units of administration mounted in some cases to the hundreds. Massachusetts at one time had over 200, New York

187, Michigan 116, and little Delaware more than 100. Everything was topsy-turvy and unsystematic, like a school-room without a teacher, an athletic team without a captain, or an army without a commander.

Consequences of Administrative Chaos

The consequences of this grotesque and ill-formed scheme of administration may be summed up in two words—extravagance and inefficiency. It was bound to be wasteful and unduly expensive, even though devoid of graft and corruption, because of the duplication of effort, the lack of effective team-work, and the large number of unnecessary jobs. And it was likewise bound to be characterized by gross inefficiency, because there was no way to bring about effective coöperation, no way to synchronize and standardize methods of procedure, no way to secure the universal acceptance and application of improved methods and labor-saving devices, and no way to hold any one in particular responsible for results. And unfortunately it was not easy to deal with the grafters and corruptionists who inevitably established themselves under this headless system of administration. Theoretically the people could have the very best type of administration conceivable by putting only the best men in office, but administration involves so much detail and the number of positions to be filled by popular vote was so great that the people could not know or understand much about what was going on. Graft, corruption, mismanagement, and maladministration could go on for years without the people having any knowledge of it. It is for these reasons very largely that state administration has so completely fallen down on its tasks that state government stands discredited in the eyes of the people.

Principal State Officers and Departments

Aside from the office of governor there are no two states which have identical administrative systems, but the common features are sufficiently numerous to make it possible to present a general account of the principal officers and departments of state government.

Thirty-five states provide for the office of lieutenant-governor. This officer is elected by popular vote. His principal function is to preside over the state senate, and to succeed to the office of governor in case of the death or disability of the governor. States not having

the office of lieutenant-governor designate some other officer (often the secretary of state) to succeed the governor.

All of the states have the office of secretary of state, but this is a very different position from the office of secretary of state in the national government. In the states the secretary of state is a sort of glorified chief clerk and record-keeper. He is keeper of the official archives of the state; he is responsible for the publication and distribution of state laws; he keeps election records, supervises the compilation of election returns, and issues notices of elections; he is the official with whom initiative and referendum petitions and direct primary petitions must be filed; he is the keeper of the great seal of the state, and authenticates official proclamations and documents. In a number of the states he is responsible for the issuance of certificates of incorporation. In some of the states he enforces the law regulating banking and insurance companies. In a great many states he is responsible for the issuance of automobile licenses. In all but five of the states the secretary of state is elected by popular vote.

Each state has an officer known as the state treasurer. He is the receiver of taxes and other revenues and the custodian of all of the moneys of the state. Upon authorization by the legislature and in accordance with procedure laid down by the legislature he disburses the funds of the state. He is generally elected by popular vote, but there are a few exceptions to this rule.

There is in each state an official known as the attorney general. He is the adviser of the governor and other state officials on legal matters, and has authority to make rulings as to the interpretation of statutes which are binding upon other state officials and departments. He appears in behalf of the state in numerous legal actions and proceedings in which the state is a party, and is supposed to take charge of the legal business of the various departments and agencies of the state. In all but five states the attorney general is elected by popular vote.

In all but a few of the states there is an officer known as the auditor or comptroller. It is his duty to inspect and audit the accounts of all the state offices, departments, and boards; to examine into the propriety and authenticity of all claims against the state treasury; to authorize the payment of valid and proper claims; and to perform various other duties with reference to the financial affairs of the state. In some of the states he prepares the budget. In all but three states where this officer is found, he is elected by popular vote.

There is in every state an officer known as the superintendent of public instruction or commissioner of education. His duty is to supervise the enforcement of the school laws and the administration of the school system of the state. In all but fifteen of the states he is elected by popular vote. In seven of the fifteen just referred to he is appointed by the governor, and in the remaining eight he is chosen by the state board of education.

At this point uniformity begins to disappear. We find in each state a profusion of offices, boards, and departments, of which the following are perhaps the most common: state railroad commission, state public utilities commission, state tax commission, state highway commission, state board of agriculture, state fish and game commission, state board of health, state industrial accident commission, state commissioner of labor, state insurance commissioner, state commissioner of banks, state commissioner of agriculture, state fire marshal, state commissioner of corporations, state engineer, state board of education, state board of charities, state board of control, and state highway commissioner. The functions handled by these different agencies will in one state be entrusted to a single official and in other to a board, there is apparently little rime or reason about it. The incumbents of the various offices and boards are sometimes elected by popular vote and sometimes appointed by the governor and senate. In general it may be said that these numerous and diverse agencies of administration have been created to undertake functions which were not included within the scope of state administration a century ago.

Administrative Reorganization in the States

Conscious that many of the failures of state government were attributable to the topsy-turvy character of state administrative organization, students of public affairs and leaders in state politics have for years advocated most drastic and sweeping reforms in state administration. Nothing tangible was accomplished, however, until 1917 when the legislature of the state of Illinois under the leadership of Governor Frank O. Lowden passed a comprehensive law abolishing more than one hundred independent offices, boards, and commissions and consolidating their functions under nine executive departments under the control of the governor. Each of these departments is headed by a single official, or secretary, appointed by the governor and senate and removable by the governor. This reorganization did not disturb the offices of secretary of state, attorney general, state

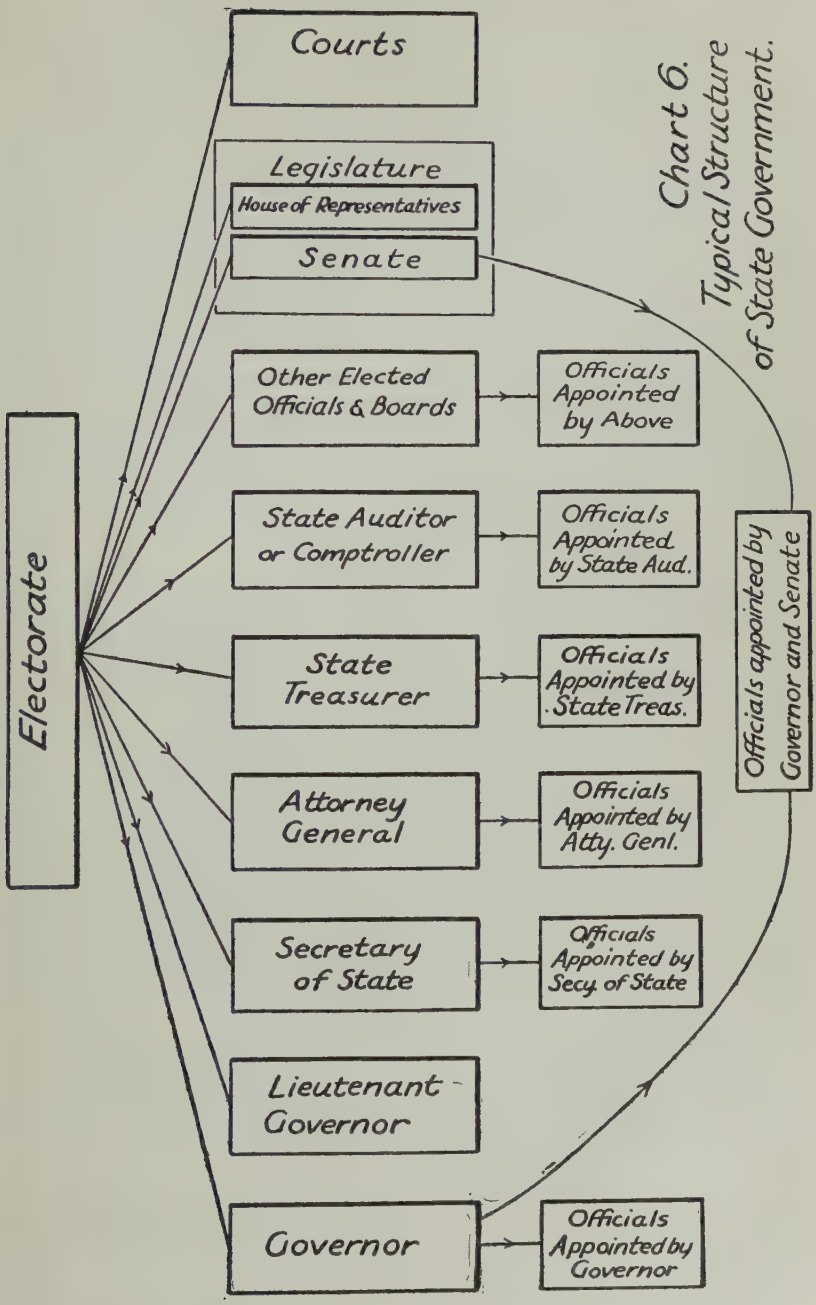

Chart 6. Typical Structure of State Government.

treasurer, state auditor, and superintendent of public instruction, because those offices were provided for in the state constitution and were thus beyond the reach of the legislature.

Since that time the movement for administrative reform has gone forward very rapidly. By 1924 ten states in addition to Illinois had put into effect administrative codes abolishing most of the old statutory offices, departments, and commissions and entrusting their functions to a small number of departments under the governor. No state as yet has modified the position of the independent constitutional offices, because that requires a constitutional amendment.[1] The question of administrative reorganization is one of the outstanding issues in state government at the present time, and there is no doubt but that in time most of the states will follow the example of Illinois and the other ten states referred to above. Whether the states will ever go so far as to recast and centralize their entire administrative machinery, including the constitutional offices, is to say the least doubtful.

Civil Service Reform in the States

Civil service reform has not made great headway in the states. Only twelve states have adopted legislation putting the merit system into operation, and the movement seems to have lost momentum in recent years.

The merit system, in the states which have adopted it, is closely patterned after the national civil service law. There is a civil service commission (usually a bi-partizan body whose members are appointed by the governor and senate) whose duty it is to conduct the examinations and administer the law. As in the case of the national government the civil service law provides for classified and unclassified services, and stipulates that appointments in the classified service shall be made on the basis of competitive examination or some other form of merit test. Employees in the classified service are on permanent tenure, and may not be removed for political reasons or participate in political activities.

[1] Massachusetts in 1918 adopted a constitutional amendment making it possible for the legislature to reorganize the constitutional offices, but the legislature has not yet taken advantage of this authority.

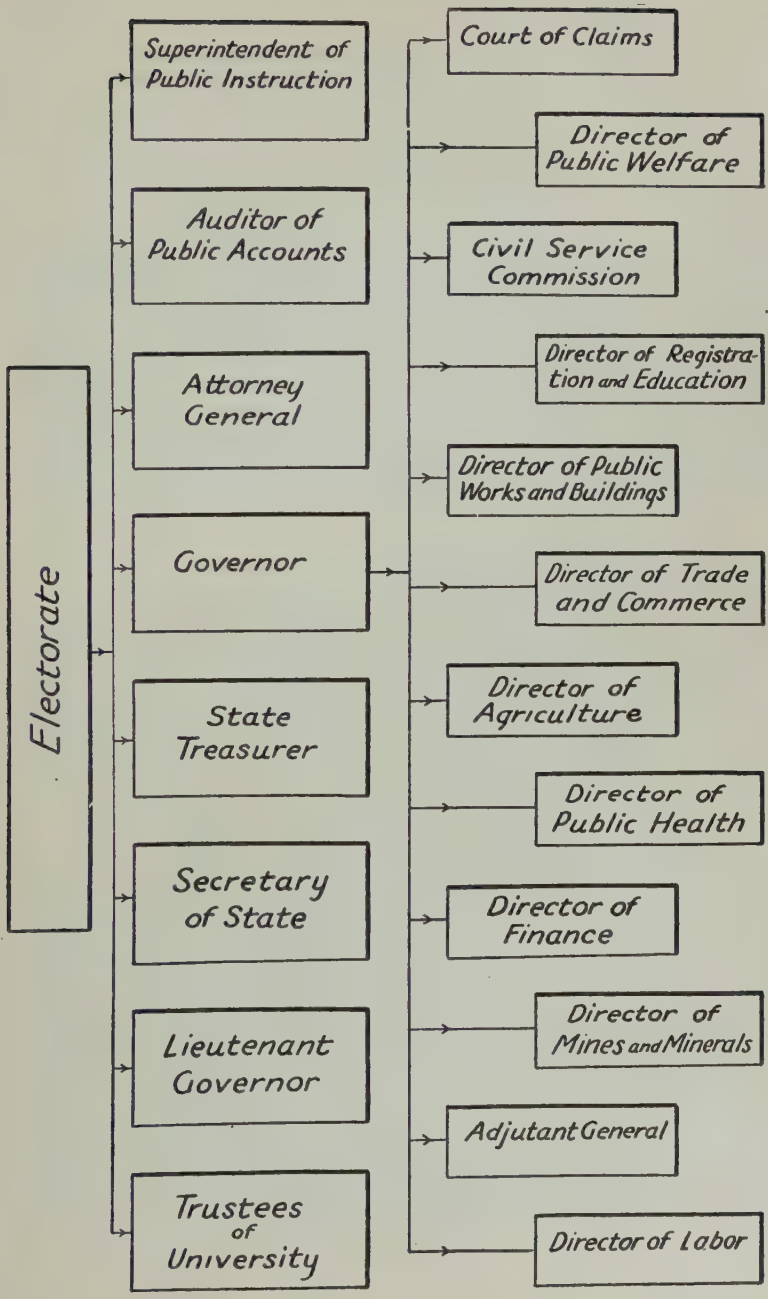

Chart 7. Reorganized Administrative System of Illinois under Civil Administrative Code of 1917.

CHAPTER XXII

THE LEGISLATURE

There is a common impression that the average state legislature is a sort of caricature of Congress; like Congress in its organization and procedure, but exaggerating all of the weak points of Congress and none of its strong ones. Whatever may be the justification for this impression, it should be remembered that there are many fundamental differences between the factors which determine the character of state legislatures and those which affect the character of Congress. Externally the resemblances between the two are many, but underneath the surface such is not the case.

The Position of State Legislatures

A state legislature might be likened to a reservoir into which was originally placed all the power that any government can exercise, but from which in course of the years various descriptions and quantities of power have been drawn off and placed elsewhere until there remains now only a residue of its formerly unlimited authority. If it were not for the power taken away from state legislatures by the Federal Constitution and the various state constitutions, the supreme power of government in this country would still reside in our state legislatures. The Constitution of the United States, by conferring certain powers exclusively upon the United States and by forbidding the states to exercise certain other powers, makes a large draft upon the originally unlimited authority of the state legislatures. But the Federal Constitution is only one cause of the shrinkage of the power of state legislatures; state constitutions even more than the National Constitution operate to restrict and circumscribe the authority of state legislatures. It has been a rule of constitutional interpretation in this country that the state legislature, being regarded as the original repository of governmental power, could exercise any power not taken away from it by the Constitution of the United States and the constitution of the state.

Under the first state constitutions the legislature was virtually

supreme, except for the restrictive provisions of the National Constitution; but the changes in state goverment during the past century or so have nearly all taken the form of multiplied limitations upon the power of the state legislature, so that now a state constitution must be regarded as an elaborate and detailed document whose chief purpose is to circumscribe and define the limits of legislative power. The constitutions of all of the states have taken away from the legislature practically all executive and judicial functions and bestowed them upon independent branches of government; they have provided in detail for the organization of all branches and departments of state government, thus depriving the legislature of this important function; they have set up in considerable detail the powers and organization of county, town, and municipal government, thus curtailing the legislature's original freedom in this field; they have come to incorporate long lists of prohibitions upon the legislature; and many of the newer state constitutions have included extensive codes of legislation on such subjects as corporations, railroads, and labor, with the definite intention of precluding or restricting legislative action in these fields.

Thus the state legislature has come to be surrounded by a wire entanglement of constitutional restraints, both national and state. Despite these many and often quite unintelligible restrictions the state legislature is still expected to function as a policy-determining and law-making body for the state. It is supposed to occupy the position of a power plant in state government; but it is a power plant with many dynamos dismantled and many distributing lines cut off. This fact the critic of state legislatures should keep ever in mind.

The Bicameral System in State Legislatures

Every state legislature consists of two houses. The lower chamber is commonly known as the house of representatives and the upper chamber as the senate. In one or two states the lower house is called the assembly, and in a few others it is called the house of delegates. It is sometimes supposed that the two-chambered legislature in the states is an imitation of the bicameral structure of Congress, but as a matter of fact the bicameral system was intrenched in the states long before the adoption of the Federal Constitution. In colonial times there were radical differences between the upper and lower chambers of the legislative assembly. The upper body

was known as the governor's council, and in most of the colonies was made up of persons appointed by the governor. It served in the capacity of an executive council as well as a branch of the legislature; in some of the colonies it also served as the supreme appellate court of the colony. Since the governor was in most cases appointed by and subject to the control of the home government, it was inevitable that the council should be made up of persons sympathetic with the British cause and generally antagonistic to the lower house, whose members were elected by the qualified voters. After the Revolution many of the states abolished the governor's council and established in its place the state senate; others established a senate but retained the council for executive purposes; and three of the states for a short period abandoned the bicameral system altogether. In those early times, however, the state senate was a very different body from the lower house. The right to vote was restricted in such a way that only large landowners or taxpayers could vote for members of the senate, and only persons of considerable wealth were qualified for membership in that branch of the legislature. The senate, therefore, was in a peculiar sense the legislative organ of the wealthy aristocracy of the day, while the house of representatives represented the middle and lower classes.

These differences between the two chambers have almost entirely disappeared. The only substantial differences now remaining are that the senate is always the smaller body and that the members of the senate are generally elected for longer terms and to represent larger constituencies than the members of the lower chamber. In some of the states the senate is a continuous body like the national senate, and in nearly all of the states it has one or two special functions, such as the confirmation of executive appointments and the trial of impeached officials. In a number of the states, however, even these minor differences have almost disappeared, and the senate is tending to become merely a duplicate of the lower house on a smaller scale.

Very naturally, then, arises the question, "Why should we have two chambers in the state legislature?" The answer is that although we have abandoned the early idea that the two houses ought to represent different classes and interests, a great many people still feel that the bicameral arrangement is desirable because of the supposed faculty of each house to exercise a restraining, checking, and corrective influence upon the other. It is believed, in other words, that the blunders, excesses, and extravagances of each house will be counteracted by the jealous watchfulness of the other house.

Careful and scientific studies of state legislatures in actual operation have shown that this notion is without much foundation in fact; that the bicameral check not only fails to work, but that the bicameral system is itself productive of confusion, delay, irresponsibility, hide-and-seek political strategy, and undue extravagance.[1] Nevertheless we still cling superstitiously to the bicameral system, obstinately refusing to apply in state government lessons learned many years ago in city government. We seem to have forgotten that not more than fifty years ago the bicameral council was almost universal in American cities and was being defended with precisely the same arguments that are now being used in support of the bicameral state legislature. It was established beyond question, however, that the bicameral council was one of the principal causes of the tragic failure of city government in this country, and the bicameral council had to go. While it would not be accurate to say that the amazing rehabilitation of city government which has taken place during the last three or four decades is entirely attributable to the abandonment of the bicameral council, it is nevertheless conceded by every one that not nearly so much progress could have been made if the bicameral system had been retained. It is interesting to note also that the bicameral system is losing ground in the state legislatures of other federal governments. Only two of the provinces of the Dominion of Canada now retain the bicameral legislature; it has been abandoned by six states in the Australian Commonwealth, by all of the cantons of Switzerland, by many of the German states, and by most of the states in the federal republics of Latin America.

The Composition of State Legislatures

There is no state legislature as large as Congress, but nearly all of them are considered too large for the efficient transaction of business. The size of each house, and thus the total size of the legislature, is determined in various ways. Sometimes the state constitution prescribes the maximum number of members for each house and leaves the legislature to fix the actual number anywhere below those figures; sometimes the constitution fixes both a maximum and a minimum; sometimes a fixed number is set for one house and a maximum and minimum for the other; sometimes an exact number is fixed for both houses; and sometimes the legislature is given com-

[1] See Colvin, *The Bicameral Principle in the New York Legislature;* Haines, *The Minnesota Legislature of 1911;* Temperley, *Senates and Upper Chambers.*

plete freedom to fix the number for one house, while the size of the other is more or less arbitrarily determined by the constitution. The largest state senate is that of Minnesota with 67 members and the smallest that of Delaware with 17 members. The largest lower chamber is that of New Hampshire with 418 members, and the smallest is found in Delaware and Arizona where the number of members is 35. The average size of the state senate is between 30 and 40 members, and the average size of the lower house is between 100 and 125 members.

The basis of representation in state legislatures is geographical; that is to say, the membership of both houses is apportioned among the geographical subdivisions of the state. These geographical subdivisions (counties, towns, assembly districts, senatorial districts, etc.) are not always represented in the state legislature in strict proportion to population. In fact the contrary seems to be more often the rule. In many of the states each county or town is entitled to a certain minimum of representation in the state legislature regardless of population, and some of the state constitutions forbid the joining of any county or town to another county or town for purposes of representation. A great many of the states have adopted the practice of having all members of both houses elected to represent single-member districts. In those states, when a county or town is entitled to more than one member, it is divided into a number of districts equal to the number of members. In states where it is permissible to unite different counties and towns for representative purposes, single-member districts are established without regard to county or town lines. It need hardly be remarked that the establishment of these districts is accompanied by almost unlimited gerrymandering. When the single-member-district system is not used, it is required that counties and towns having more than one member shall elect them on a general ticket.

In a country which is growing as rapidly as our own, great changes in population are bound to occur within a very short space of time, and therefore any scheme of legislative apportionment soon becomes obsolete. To keep the apportionment abreast of the shifting tides of population, it is specified in the constitutions of most of the states that the legislature shall make a reapportionment after each decennial census, and sometimes more frequently than that. There is, unfortunately, no way of compelling a state legislature to obey such a mandate, and there are conspicuous cases where the legislature has willfully ignored it. But even though the legislature makes the regular apportionment as required by the constitution,

there are usually restrictions as to town and county representation which preclude a reapportionment in strict proportion to population; and, furthermore, there is nothing to prevent the legislature from gerrymandering the representative districts or senatorial districts in disregard of the rule of proportionate representation.

The net result of all these conditions and facts is that state legislatures are almost without exception misrepresentative. The most glaring injustice is the gross under-representation of the urban portions of the state. Although the population of many of the states is predominantly urban, and although the urban element is a large and vital element in all of the states, the rural districts almost invariably are in position to dominate the state legislature and impose their will upon the cities. This condition, as much as any other single factor, is responsible for the prevalent discontent and dissatisfaction with state legislatures. The people as a whole cannot be expected to have much confidence in legislative bodies which they know do not represent them.

The Election of Members of State Legislatures

The methods of choosing members of state legislatures are not substantially different from those noted in our study of Congress. Candidates are nominated by party conventions or direct primary elections. These candidates are voted upon at the regular biennial elections at which other state officials and members of Congress are voted upon. There are a few states which elect members of the legislature in the odd years in which there is no presidential or congressional election. This plan has the advantage of allowing the people to consider state issues entirely apart from national issues, but it is frequently criticized as being unduly expensive.

The Sessions of State Legislatures

In 41 states the legislature convenes once in two years; in six states the legislature meets every year; and in one state the legislature has but one session in four years. Among the states which follow the biennial-session rule all but six require the legislature to meet in the odd year of each biennium. In the early period of our history it was customary for the legislature to meet every year, just as Congress does, but the decline of public confidence in state legislatures has led to the adoption of the two-year rule in most of the states. People seem to feel that the legislature is a

necessary evil at best and that the fewer the sessions the better.

Not only is the legislature limited to biennial sessions in most of the states, but in 33 of the states the length of time it may remain in session is arbitrarily fixed by the constitution. The shortest period allowed is 40 days (Oregon, South Carolina, and Wyoming) and the longest fixed period is five months in Connecticut. This practice of limiting the duration of the sessions of the legislature is also result of the almost universal distrust of state legislatures, and is a manifestation of a desire to compel the legislature to transact its business and adjourn as quickly as possible.

Legislative Organization and Procedure

As regards internal organization there is a close parallelism between the state legislature and Congress. The lower house of the legislature chooses its presiding officer from its own membership, and he is always known as the speaker. He is a close counterpart of the speaker of the national House of Representatives, or rather of what the latter was before the overthrow of Speaker Cannon and the accompanying change of the rules in 1910. In addition to his functions as presiding officer of the house of representatives, the speaker in state legislatures usually appoints all committees and dominates the rules committee just as the national speaker did prior to the reforms mentioned above. In the states having the office of lieutenant-governor this official is the president of the senate, but in states which have no lieutenant-governor the state senate chooses its presiding officer from its own membership. Both houses of the state legislature choose their other officers and control their own internal organization and procedure subject to the limitations of the state constitution.

In most of the state legislatures the committee system closely follows the congressional pattern, but there are a few states, as for example Massachusetts, Maine, and Connecticut, which have established a system of joint committees. This, it is claimed, tends to eliminate the delay, duplication, and friction incident to the dual system where the committees of the two houses are entirely separate and distinct. There are a few states, too, in which legislative committees are compelled to report out all legislation referred to them and are thus deprived of the power of silent strangulation which is one of the principal sources of committee power in Congress and most of the state legislatures. The committees of the lower house

are as a rule appointed by the speaker, while the committees of the senate are generally elected by the membership.

State legislatures do not have as much freedom as Congress in formulating their own rules of procedure, for state constitutions very generally regulate legislative procedure in considerable detail. Among the most common constitutional restrictions upon legislative procedure are provisions determining the number necessary to constitute a quorum, provisions fixing the form of legislation, provisions forbidding amendment by mere reference to title, provisions with reference to the reading of bills, provisions with respect to the printing of bills, provisions with respect to roll-calls, etc. Should a legislature fail in the passage of any bill to comply with these restrictive provisions, the act so passed may be declared null and void by the courts.

The rules of both branches of the state legislature are modeled somewhat after the rules of the corresponding branch of the national legislature, and the steps involved in the passage of a bill through a state legislature are much the same as in Congress.

The Party System in State Legislatures

The party system in state legislatures is very similar to the system of party control noted in our study of Congress. The keystone of the system is the party caucus, which dominates the scene in state legislatures in about the same fashion as in Congress. It controls the selection of presiding officers, largely influences and often entirely controls the selection of committees, chooses floor leaders and party whips, and determines the position of the party on crucial legislation. Debate is curtailed in much the same way as in the national House of Representatives, and often more arbitrarily. The seniority rule is not as rigidly followed in state legislatures as in Congress, but it is always an important factor in the choice of committees and party leaders. The submergence of the individual member is often quite as pronounced as in Congress. Of late years it has become increasingly difficult to maintain the solidarity of party lines in the state legislatures, because of the many issues which now cut squarely across party lines.

Relations with the Executive

The check-and-balance system has worked out in much the same way in the states as in the national government. As noted in the

preceding chapter the governor in all but one of the states has the power to veto acts of the legislature. In many cases this executive check upon the legislature is even more pronounced than in the national government because of the fact that the governor's veto extends to single items as well as the whole bill. Through the adoption of the executive budget system during the past decade or two many of the states have greatly increased the weight and influence of the governor in financial legislation, and one state (Maryland) has a constitutional provision which forbids the legislature to increase the items of the budget as submitted by the governor. The governor's influence as a party leader is generally on the increase, and a vigorous and forceful governor can almost invariably force the members of his party in the legislature to acknowledge his leadership. Even when the governor is confronted by an adverse party majority in the legislature, his position is so strong that he can very often bring his opponents to accept a large part of his legislative program.

The legislature, on the other hand, has ways and means of exerting pressure and exercising influence upon the governor. To a certain extent the legislature is always able to shape and determine the character of the administrative organization under the governor; the state senate almost invariably must confirm the governor's appointments; and the legislature in the final analysis controls the public purse and through this power is able to impose material checks upon the executive.

What we have then in the states is precisely the same condition that we have observed in the national government. The principal leader of the party is the chief executive; and between him and the legislature, which is the organ through which party programs must be converted into law, there is no contact except of an indirect and negative character.

The Shortcomings of State Legislatures

Many of the obvious defects of state legislatures have been brought out in the preceding paragraphs; but it is well to recapitulate and to address our minds for a little time to this subject alone. We have already seen that state legislatures are in general too large and cumbersome for effective action; that they are not as a rule faithfully representative of the whole people; and that they are usually deficient in leadership. Let us now consider some further defects.

One of the cardinal weaknesses of most state legislatures is the

deplorable mediocrity, from the standpoint of statesmanship and intellectual equipment, of the vast majority of state legislators. What business concern, what private enterprise of any sort, could hope to succeed if it should follow the practice of delegating the control and management of its affairs to persons of second-rate or third-rate ability? But state legislatures are habitually made up of persons of most inferior ability. Why is this so? Why do not people of conspicuous and exceptional ability seek election to state legislatures? There are several reasons. In the first place the system of nomination and election works in such a way as to disgust a great many fine-fibered people. In the second place, the basis of representation is often such as to place almost insuperable obstacles in the way of persons of outstanding ability. In the third place, the nature of the party system and the fact that real party leadership falls to the executive branch of the government tend to throw a wet blanket upon the aspirations of persons who might have an ambition to achieve genuine distinction by service in the state legislature. In the fourth place, the compensation is generally inadequate and the tenure of office precarious. In the fifth place, the fact that state politics is usually considered as merely a tail to the kite of national politics tends to focus the interest of persons of major ability in national affairs.

Not only is the membership of state legislatures inferior from the standpoint of native ability, but a great majority of state legislators are amateurish and inexperienced. The biennial turn-over of personnel is much greater in state legislatures than in Congress. Most members of Congress are anxious to serve as long as they can be reëlected and are ready to devote their entire lives to congressional service. Such is not the case in state legislatures. It is very seldom that a state legislator is not satisfied with one or two terms, or at the most three or four, and the man who is willing to devote his entire life to service in the state legislature is a great rarity. There are of course many reasons why this difference exists, but the principal one perhaps is the greater honor and distinction which attach to national legislative service and the ridicule and contempt that are heaped upon state legislators.

Another weakness of state legislatures is the fact that in most states the volume of business is too great to be dispatched in a limited biennial session. This is a growing difficulty. As our social and economic life becomes more complex, the problems requiring the attention of the state legislature become very much more numerous and far more difficult to solve intelligently than were those

of fifty years ago. It is now a physical impossibility for a state legislature in a session of 40 to 90 days to give careful and intelligent attention to the vast mass of business which must inevitably accumulate during a two-year period. The result is carelessness, haste, and heedlessness. The business must be jammed through in some way, and is; but not in a way satisfactory to the people of the state.

Still another weakness in our state legislative system is the dominant, though often obscure, part played by professional lobbyists representing various private interests. Few people realize how much of our law is concocted by private interests of one sort and another, and merely ratified by the legislature. During a legislative session organized interests such as manufacturers, labor unions, farm organizations, reform leagues, and special interests of every conceivable character maintain paid representatives at the state capital, whose business it is to try to accomplish the defeat of legislation which they consider adverse and to promote legislation which they consider favorable. In ways both direct and devious they exert a tremendous influence upon the legislature; and in not a few cases legislation drafted by such paid lobbyists has been introduced in the legislature and put through without substantial change. It is not intended to imply that all of the works of the lobby are evil, for they are not. The evil arises from the fact that through the lobby the function of legislation is to a large extent taken over by private interests which are not responsible to the people and about which the people can know very little.

Another weakness of state legislatures is that as a common thing they have no adequate means of getting at the facts of any proposal, and therefore are inclined to base their action upon statements made or facts alleged by partizans of one side or the other.

Legislative Reform

There are two kinds of legislative reform—piecemeal, palliative measures designed to correct or minimize this or that particular fault, and wholesale and sweeping legislative reconstruction.

A great many reforms of the tinkering type have been taken up in recent years. Changes in rules have remedied many of the procedural defects of state legislatures; improved methods of nomination and election have been introduced in many states; efforts have been made to reduce the volume of legislative business; a great many states have established legislative reference libraries; a few states have set up official bill drafting bureaus; a number of the states

have enacted legislation requiring the registration of lobbyists and limiting their activities; and so on and so forth.

All of these reforms are worthy and helpful, but not one of them goes to the roots of the legislative problem. Students of public affairs during the past few years have been devoting much thought and study to the reform of state legislatures, and a number of proposals for comprehensive reconstruction of state legislatures have been put forward. The latest of these is embodied in the so-called Model State Constitution prepared by the National Municipal League in 1923. This proposal is especially interesting because it was formulated by a committee of eminent publicists and clearly discloses the trend of the "best minds" on the subject of legislative reform.

The Model State Constitution in brief provides for a state legislature of one house, the members of which are to be elected by proportional representation [2] from large districts each of which would have not less than five members. Although the size of the legislature is not definitely fixed, it is suggested that 60 should be about the maximum number. Provision is also made for a legislative council to consist of the governor and seven members of the legislature elected from that body by proportional representation. The members of the legislative council would devote their full time to public business and would be compensated accordingly. The legislature would meet annually, or biennially if preferred, but there would be no time-limit upon its sessions. The legislative council would be in almost continuous session. Between sessions of the legislature the legislative council would collect information and study questions pertaining to public welfare, and would be prepared to report its conclusions to the legislature. It would also have power to prepare and initiate bills embodying its conclusions, as well as to recommend to the legislature any action deemed suitable and expedient. During sessions of the legislature the legislative council would presumably act as a board of strategy or steering committee for the legislature. It is supposed that the legislative council would supply the legislature with informed, intelligent, and aggressive leadership. It would have great prestige because of the fact that the governor, the acknowledged leader of his party in the state, would play a large part in its deliberations. This probably would tend to bridge over the chasm now existing between the executive and legislature. It is also to be presumed that the seven members elected by the legislature would include the most prominent and influential leaders of all parties.

[2] For a description of proportional representation see Chap. XXIX *infra*.

Proportional representation would practically insure such a result.

It is not difficult to see what this proposal aims to accomplish. Its first object is to simplify the structure of the legislature and to render it a more truly representative body. The second object is to break down the barriers between the legislative and executive departments and thus to bring about coöperation and harmony where now there are conflict and discord. The third object is to provide the legislature with competent and able leadership. The fourth object is to avail the legislature of the services of a body of full-time legislative experts, representing all different points of view, who would have time for thorough investigation of every project and would thus be able to supply the legislature with adequate and reliable information. The proposal is certainly a most attractive one, and it is to be hoped that some one of the states will eventually have the boldness to give it a trial.

CHAPTER XXIII

LEGISLATION BY THE PEOPLE

The culminating act of the tragic decline of state legislatures came in the early years of the present century when the direct legislation movement swept over the country. Beginning with South Dakota in 1898, some 22 states have placed in their constitutions provisions for the initiative and referendum, whereby it is possible for the people acting directly to enact laws and to defeat laws enacted by the legislature. Nothing speaks more eloquently of popular feeling against state legislatures than this movement to enable the people by direct action to override the legislature and to enact legislation independently of it.

The Initiative

The initiative is a process whereby laws may be enacted by direct vote of the electorate. The customary steps in the use of the initiative are as follows: (1) persons desiring the enactment of a certain law draft the measure and circulate petitions to have it placed on the ballot at the next election; (2) these petitions must be signed by a certain proportion of the qualified voters (usually 8% or more) and filed with a designated public official (commonly the secretary of state); (3) if the petition is found to be properly signed by the required number of voters, the measure is printed on the official ballot for the next regular election in such a way that the voters may vote for or against it; (4) if a majority or a certain percentage of the voters vote in favor of the measure, it becomes a law, and if not, it is defeated.

The foregoing is the more common type, and is known as the direct initiative. A few states have what is called the indirect initiative, which requires the measure initiated by petition to go first to the state legislature; and it may go on the ballot only in case the legislature refuses to act upon it, rejects it, or substantially modifies it. Some states require an additional or supplementary petition to

take the measure out of the hands of the legislature and place it on the ballot.

In most of the states having the initiative, it may be used for the enactment of both ordinary statutes and constitutional amendments. Several states require a larger number of signers to a petition to initiate a constitutional amendment than to a petition for an ordinary statute; and seven states confine the use of the initiative to the enactment of ordinary statutes. One state (Ohio) uses the direct initiative for constitutional amendments and the indirect initiative for ordinary statutes.

The Referendum

The referendum is a process whereby the people by direct vote may overthrow an act of the legislature or defeat a constitutional amendment submitted by the legislature. The referendum has long been used in connection with constitutional amendments, and the constitutions of most of the states require all constitutional amendments to be submitted to a vote of the people at some stage in their progress. But in connection with ordinary statutes the referendum did not come into vogue until after 1898. To invoke the referendum against an ordinary act of the legislature, it is necessary, after the passage of the act by the legislature but before it takes effect, to circulate a petition requesting that it be held in abeyance and placed on the ballot at the next election. If this petition, duly filed with the proper state official, is signed by the requisite number of qualified voters (usually 5%), the measure is held up and goes on the ballot at the next regular election. If a majority of the voters then vote against it, it is defeated and becomes a dead letter; but if the majority vote in favor of it, it goes into effect and becomes law.

There are two types of referendum—compulsory and optional. It is frequently specified in the state constitution that constitutional amendments and sometimes other measures may not go into effect unless submitted to a vote of the people and approved by a popular majority. In such cases the referendum is compulsory. In other cases the legislature is authorized at its own discretion to refer measures to popular vote, or the referendum may be invoked against the will of the legislature by popular petition. In these cases the referendum is said to be optional.

Not all measures are subject to popular referendum. State constitutions usually provide that the referendum may not be invoked

upon emergency measures. What constitutes an emergency measure, is the subject of some controversy. State constitutions frequently define emergency measures as those imperatively necessary for the preservation of public health, peace, or safety; but there is much difference of opinion as to whether the decision of the legislature shall be final in such matters, or whether the courts may undo the action of the legislature in cases where they are of the opinion that no real emergency exists. The former rule prevails in some of the states, but the tendency in most of the states seems to be to allow the courts much freedom in reviewing legislative declarations as to the emergency character of legislation. Legislative enactments do not ordinarily take effect until the end of a prescribed period (generally 90 days) after the adjournment of the legislature; and it is within that period that referendum petitions must be filed. But emergency measures take effect immediately, and hence it is usually provided that they shall be exempt from the referendum.

The Initiative and Referendum in Local Government

By legislative grant and by locally adopted charters the initiative and referendum have been widely extended to county, town, and city government. Except for differences of detail, such for example as the number of signers required, the form of petitions, and the procedure in filing petitions, the operation of the initiative and referendum in local government is quite the same as in state government.

Experience with the Initiative and Referendum

At the time that the initiative and referendum first began to make rapid headway in this country there was a great deal of extravagant enthusiasm on the part of the champions of these reforms, who often voiced the belief that the initiative and referendum would usher in a millennial age of direct popular government. And, on the other hand, there was a great deal of solemn doubt on the part of conservatively disposed persons, who predicted the undermining of representative government and the advent of an era of unbridled demagogy. We have now had sufficient experience with the initiative and referendum to know that both of these points of view are mistaken. Direct legislation has not proved to be a panacea; it has not made it possible to get along without legislatures, or relieved us of our dependence upon the legislature

in the most important and fundamental matters of government. Nor has direct legislation proved to be a fraudulent nostrum and a menace to the stability and perpetuity of our institutions. In practice the initiative and referendum have exhibited many faults, both superficial and inherent, and likewise many virtues, similarly superficial and inherent.

Many of the faults of the initiative and referendum are more in the nature of mechanical defects than inherent weaknesses. In many states it has been discovered that the number of signatures required to place a measure on the ballot is either too large or too small, usually the latter. A petition containing signatures equal to 5% or 8% of the electorate really speaks for a very small proportion of the people of the state. And when the percentage, as is usually the case, is applied to the number of persons voting in the preceding general election, the number of signers required to launch an initiative or referendum petition is likely to be much less than the supposed 5% or 8% of the whole electorate, because it is very seldom that anything like the whole number of voters participate in an election. Very small minorities, consequently, can invoke the referendum on acts of the legislature that are clearly desired by a large majority of the people, or can load the official ballot with initiated measures that have no chance of getting the support of a majority of the people. "Die-hard" minorities in state legislatures have often taken advantage of this fact, and by threatening a referendum on a measure have been able to wring unwilling concessions from the majority. Likewise factious minorities of "cranks" and zealots have been able in some states to bring before the voters time after time measures that have been repeatedly and decisively defeated in previous elections. Various expedients have been introduced to prevent these abuses. A few states, such as Mississippi and Maine, definitely fix the number of signatures required for initiative and referendum petitions. Maine, for example, requires 12,000 signatures for an initiative petition and 10,000 for a referendum petition. Such a scheme eliminates fluctuations in the number required, but it cannot eliminate minority abuse of the initiative and referendum unless the figures are made inordinately high. Several states, with the same purpose in view, have increased the percentages used to determine the necessary number of signers; some states have taken steps to prevent the securing of all or a major part of the signatures in one county or city; and a few states have placed restrictions upon the frequency with which a measure once defeated may reappear on the ballot.

It should not be forgotten, however, that the labor and expense involved in getting petitions signed are so great that any material increase in the number of signatures required tends to preclude altogether the use of the initiative and referendum, or at least to confine it to persons or interests with ample funds at their disposal.

A similar problem has arisen in connection with the question of the number of votes required for the adoption of an initiated measure. The most common rule is that if a majority of those voting on the particular measure vote in the affirmative, it is adopted and becomes law. Now it often happens that a great many of the people who go to the polls, for lack of interest or other reasons, fail to vote on all the measures which appear on the ballot. When such is the case, initiated measures may be adopted and placed on the statute books by a very small minority of the total electorate. To prevent this, several states have provisions to the effect that an initiated measure must receive an affirmative vote equal to a majority or a certain percentage of the total vote cast in the election.

Another serious problem arises in connection with the circulation of petitions. The numerous cases in which signatures have been secured by misrepresentation and fraud have resulted in the adoption of stringent regulations governing the circulation and signing of petitions. But the task of checking all the signatures on a large petition is so difficult and expensive, that even the most stringent regulations are often laxly administered. A few states have even gone to the extent of forbidding altogether the employment of paid circulators.

Another cause of difficulty has been the large number of initiated and referred measures appearing on the ballot at one time. In some of the states, as for example California and Oregon, it has not been uncommon for the voters to be confronted with from 15 to 50 measures at each election. It is so obviously impossible for the voter to act with intelligence and discrimination under such circumstances that several states have taken steps to limit the number of measures which may appear on the ballot at one time.

A great deal of trouble at one time and another has been occasioned by the faulty draftsmanship of initiated measures. Such measures usually are prepared by those who initiate the petitions, or their agents. Not ordinarily being skilled in statutory draftsmanship these persons frequently are guilty of absurd and mischievous blunders. The indirect initiative, by compelling all initiated measures to go first to the legislature, is designed to prevent that sort of thing. Some states also require that all initiated measures shall,

before going on the ballot, be submitted to the attorney general of the state, for an opinion as to their legal form.

Perhaps the chief difficulty with the initiative and referendum has been that the great mass of folks have not been and could not be adequately informed as to the true merits, the probable consequences, and the real forces behind measures proposed for their consideration. Realizing their helplessness, the people in many cases have adopted the slogan, "When in doubt vote NO". From the large proportion of measures rejected each year it would seem that the people are more often doubtful than certain. It is for this reason that direct legislation works best in connection with simple, non-technical questions, involving clear-cut moral issues that are readily grasped by the popular mind. Prohibition, for instance, has proved to be almost an ideal question for direct popular action; while such questions as the abolition of the uniform rule in taxation or the regulation of public utilities have proved exceedingly difficult for the people as a whole to grasp. To put it succinctly, the success of the initiative and referendum varies directly with the capacity of the people as a whole to understand and vote intelligently upon the measures presented to them. And it is no derogation of the average mind to say that the capacity of the people to comprehend complex and abstract legal or economic proposals has been considerably over-estimated. In the first place, experience has shown that it is next to impossible to get all of the vital facts before the people; and in the second place, it has been conclusively demonstrated that the majority of people are not qualified by education and experience to appreciate the true significance of many of the facts which might be presented to them.

It must be conceded, however, that the initiative and referendum have been productive of many beneficial results. Because of the unrepresentative character of our legislatures it has been seen that they do not always correctly gauge public opinion, and therefore very often enact measures that are not desired by the majority of people or refuse or fail to enact measures that are very much desired. The initiative and referendum have made it possible in many instances to overcome the handicap of a misrepresentative legislature. Direct legislation has also had the effect of rendering the legislature considerably more responsive to public opinion and more careful to ascertain the state of public opinion before taking action. It may be said also that the initiative and referendum have probably had a very decided educational value. By attempting to legislate themselves, the people have come to have a better understanding

of the problems and difficulties besetting the legislature and a clearer appreciation of the necessity for legislative reform. The initiative and referendum have also made it possible with reference to outstanding measures of a controversial character to convert the state into a vast forum and thus compel proponents and opponents to go directly to the people with their arguments. Regardless of whether the decisions of the people in such cases have been sound or unsound, they have been popular decisions, and this has had the effect of stimulating the political consciousness of the great mass of people to an unusual degree.

CHAPTER XXIV

THE COURTS

It is the fervent hope of most good citizens never to have occasion to appear in court. The law to most persons is a profound and perilous mystery; and the courts, which administer the law, are viewed with awe and dread. It is unfortunate that such is the case, because the courts in some ways stand in greater need of popular understanding, sympathy, and support than either the legislative or the executive branch of government. Especially is this true of the state courts, for they have to administer that portion of the law which contains the most numerous possibilities of trouble for the average citizen.

The Business of State Courts

To appreciate the character of the work done by the state courts we must remember at the outset that the law of this country is divisible into two great categories—federal law and state law. Federal law is the law of the national government, and is embodied in the Constitution and the acts of Congress adopted in pursuance of powers granted in the Constitution. State law is the law which in each of the 48 states covers all of those subjects not included in the powers delegated to the national government. State law is much broader in scope and more varied in character than federal law; and of course there are 48 distinct systems of state law.

Both federal law and state law have two main divisions—criminal law and civil law. Criminal law is that body of law which defines public offenses and provides for their punishment, while civil law is that body of law which regulates and determines the rights and obligations of individuals in relations which involve no public offense. The criminal law of the national government has to do only with violations of the Constitution and statutes of the United States; and of course the only subjects with respect to which it is possible for Congress to enact criminal legislation are those which the Constitution gives over to the keeping of the national government. The

broad and general power to determine what acts shall constitute offenses against society belongs to the states. So it is also with the civil law. Congress may regulate and control civil rights and obligations with reference to those subjects on which it has power to legislate, but otherwise the field of civil law belongs to the states. This means that the law of contract, the law of property, the law of domestic relations, the law of private wrongs, and all the other great divisions of civil law are for the most part state law. That is why the average person is far more likely to get into difficulty under state law than under federal law.

Now the business of the state courts is primarily to administer state law; to interpret, apply, and enforce it in individual cases. The courts find the law a body of broad and general rules governing human conduct and human relations, and they convert it into minute and specific orders saying precisely what Jones, Smith, Brown, or any particular individual must do or not do in a given instance. The law says that contracts made in a certain way shall not be valid; the courts say whether a given contract between Jones and Smith was made so as to be valid and what are the rights of the respective parties. The law says that marriage under certain circumstances shall not be valid; the courts determine whether a particular marriage between two individuals complies with the law. The law says that the title to property shall descend in a certain manner; the courts decide who has title to a particular piece of property about which there is controversy.

The Organization of State Judicial Systems

The judicial system in all of the states consists of a series of courts graded according to the sort of cases they handle.

The lowest court in all of the states is the court of the justice of peace. Justices of the peace have authority to try both criminal and civil cases of petty character. In civil cases their jurisdiction is generally limited by the amount of money involved in the dispute, and in criminal cases by the severity of the penalty involved. Ordinarily they may not try civil cases involving more than $100 or criminal cases in which the penalty is more than a small fine or a short term of imprisonment. In most of the states also the justices of the peace have power to conduct preliminary hearings in cases where persons are charged with serious crimes, in order to determine whether they shall be held for a grand jury investigation.

Justices of the peace are as a rule elected by popular vote, and are not obliged to be licensed attorneys.

Next above the justice of the peace in most of the states there is a tribunal of general jurisdiction which is variously known as the county court, the court of common pleas, the district court, or the superior court. As a rule this court has jurisdiction throughout one or more counties, and may try all sorts of cases. There are a few states in which this court is not permitted to try the most serious criminal cases and the most important civil cases. Nearly all lawsuits and criminal trials, except those of the pettiest sort, originate in this tribunal. Therefore it is sometimes called the court of original jurisdiction. The judges of this court must be licensed attorneys and in most states are elected by popular vote.

Next in rank comes an intermediate appellate court whose jurisdiction usually extends over several counties. This court as a rule is not a court of original jurisdiction. That is to say, cases come to it on appeal from lower courts, but do not originate with it. It may, however, be given original jurisdiction in certain kinds of cases. This court is usually known as the circuit court, the court of appeals, or the court of errors. In many cases its decision is final, but in many other cases its decisions may be appealed to the highest court. The judges of this court must be licensed attorneys, and are generally elected by popular vote.

The capstone of the state judicial system is the supreme court of the state, which sits only at the state capital and confines itself almost exclusively to hearing appeals from the lower courts of the state. Its decision is final in all cases except those involving the interpretation of the Constitution of the United States. The judges must be licensed attorneys, and are most generally elected by popular vote.

In addition to these regular tribunals there are in each state a number of special courts whose duty is to deal with cases of a particular sort. Many of the states have probate courts, domestic relations courts, juvenile courts, insolvency courts, and claims courts. There are still a few states which maintain separate courts, known as chancery courts, to administer that branch of law known as equity.

In 37 of the states all judges of all the courts are chosen by direct popular vote; in four states all judges are appointed by the state legislature; in five states judges are appointed by the governor and senate or the governor and council; in one state (Florida) judges of the lower courts are appointed by the governor, and the judges of the supreme court are elected by popular vote; in one

state (Connecticut) judges are nominated by the legislature and appointed by the governor. In the states where the judges are elected by popular vote the term of office is usually from four to six years, although there are a few states in which the supreme court judges are elected for terms of ten years or longer. In the states where the judges are chosen by the legislature the term of office is ten years or longer, except in Vermont where it is two years. In the states where judges are appointed by the governor the term is very long, and in Massachusetts and New Hampshire the judges of the highest court are appointed for life.

There has been much controversy over the methods of choosing judges as well as the judicial tenure of office. It appears to be the opinion of the most eminent authorities on judicial administration that popular election is not a satisfactory way of choosing judges. It is pointed out that a judicial position not only calls for high character, but for technical training and ability of an extraordinary nature. While the people may be able to select judges of high moral character, it is not believed that they are able to discern whether the candidates presenting themselves possess the requisite technical qualifications. These qualities make no dramatic appeal and cannot be brought out in a political campaign. Popular election, it is claimed, places a premium on personal popularity, campaigning ability, demagogism, and vicious politics. In a like manner it is claimed that the short term of office tends to convert judges into politicians, and influences them to conduct judicial business with an eye to political consequences. It is also said that the short term results in a constant procession of new and inexperienced men on the bench, who because of their inexperience make many serious blunders.

There are but three methods of removing judges from office before the expiration of their terms. One is impeachment by the legislature; the second is by joint resolution of both houses of the legislature requesting and authorizing the governor to remove; and the third is recall by direct popular vote. The first mode of removal is available in all states except Oregon; the second method is available in about half the states; and the third method is available in only six states.

Judicial Procedure

Upon entering a court room when a trial is in progress one notices first perhaps an official seated behind an elevated desk at one end of the room. That is the judge. He is the presiding officer of the

court. It is his duty to maintain order, to interpret the law as it applies to the case at hand, to determine what evidence may or may not be admitted in the case before the court, to make rulings on controverted questions of law, and to instruct the jury as to the law applicable to the case in question.

At one side of the judge (usually the left) one notices twelve persons sitting within a railed inclosure. This is the jury. There is always a jury in criminal cases, except in minor cases, but in civil cases the jury may often be dispensed with. The function of the jury is to decide what the evidence submitted in the case proves; whether it sustains the contention of one side or the other. In some cases the jury may make recommendations, and may even decide questions of law.

Between the judge and the jury there is a single elevated chair. This is the witness stand. It is occupied by persons who have been summoned to give testimony in the case.

Near the judge, and usually seated at lower desks in front of the judge are the clerks of the court who keep the record and perform other clerical duties, and the bailiffs who assist in keeping order, take charge of witnesses, prisoners, and members of the jury, and also at times perform various clerical duties.

On the main floor in front of the judge's dais are tables and chairs for the attorneys and the parties in the case. Behind these is a railing, and to the rear of the railing are seats for spectators.

If the case being tried is a criminal case, one may be sure that the following things have occurred before it came to trial: (1) the accused was arrested on charge of having violated some criminal law; (2) he was given a preliminary hearing, in case it is a serious offense, and bound over for further action, being held in prison unless he could put up a sum of money (known as bail) to insure his appearance for trial; (3) he was indicted by a grand jury, i. e., he had a formal accusation lodged against him by a special body of persons who heard the evidence against him and decided that it was sufficient to warrant placing him on trial, or if not this, he had a formal accusation lodged against him by the prosecuting attorney; (4) he was given a chance to plead to the indictment, and that he pleaded not guilty. If the case is a civil case, it was probably begun in a much simpler way. One person, called the plaintiff, through his attorney, lodged a complaint against another, known as the defendant. This complaint asserted that the defendant had in some way violated the plaintiff's legal rights and asked the court to give redress according to law. A copy of this complaint is served

on the defendant, who is given opportunity to reply. A series of charges and countercharges may take place between the plaintiff and the defendant; but if the upshot of the thing is that the defendant denies his liability to the plaintiff, the court then fixes a day for trial, and upon that day the two parties appear in court for a trial of the issues between them.

Once in court, the first thing in a criminal case is the selection of a jury. The same thing is true of civil cases when the jury is used. The law generally requires the jurors to be selected from the taxpayers or voters of the county in which the trial takes place. It is the duty of the sheriff, or in some states a special body of jury commissioners, to make up a list of persons who shall be called for jury service in each term of court. When the trial starts the names of persons are drawn by lot from this list, and as a person's name is drawn he takes his place in the jury box. He is then questioned by the attorneys for both sides to ascertain whether by reason of interest or prejudice he may be disqualified. Either one of the attorneys may challenge his right to serve and ask that he be dismissed, or the judge may dismiss him though he be acceptable to both attorneys. When finally a jury of twelve persons is obtained and sworn in, the trial begins. The first step is the introduction of the evidence. This is done by bringing in concrete objects having a bearing upon the facts in dispute, by the introduction of books and papers, and by the calling of individuals as witnesses to tell what they know about the matter. The rules governing the introduction of evidence are very complex and technical, and it is the duty of the judge to say what may and may not be introduced in evidence. Each attorney, by questioning the witnesses he brings in, tries to produce facts favorable to his side of the case, and by cross-questioning the witnesses of the other side, seeks to break down their testimony. When the evidence is all in, the attorneys on both sides make lengthy addresses to the jury, presumably summing up the evidence. After this the judge instructs the jury as to the law bearing on the case. The jury then retires to reach a decision; or if it is not a jury trial, the judge takes the case under consideration. When a decision is reached by the jury or the judge, it is reported in open court. In criminal cases this decision is known as a verdict; in civil cases it is known as a judgment or a decree, depending upon whether it is a common law or an equity proceeding. Unless an appeal is taken to a higher court, there remains only the execution of the decision of the court. In criminal cases the judge imposes a sentence upon the prisoner, and this is carried out by the sheriff or the of-

ficers of the state penitentiary. In civil cases the judge enters the judgment or decree on the records of the court, and it is carried out by the sheriff. In case of appeal to a higher tribunal, there is no jury trial, but simply a consideration of whether there was any error in the action as shown by the records of the lower court.

The Need for Judicial Reform

There is an alarming amount of discontent and dissatisfaction with the administration of justice in this country. In part this is explained by the fact that most people do not understand the processes of judicial administration and are thoroughly mystified by court procedure; but in the main it is attributable to other causes. The simple truth is that our state judicial systems are seriously defective in many particulars, and sometimes tend to defeat justice rather than to promote it.

The present type of state judicial organization came into being over a century and a half ago, at a time when population was sparse and judicial business was simple in character and small in quantity. For that day and condition of affairs it was probably entirely adequate, but it is wholly unsuited to the conditions of today. The chief criticisms leveled against the courts at the present time are:

1. That there is no single and responsible head to the state judicial system; no one responsible for speeding up the work; no one with authority to distribute the work properly among the different tribunals and judges; no one to coördinate the work of courts in different parts of the same state. Instead we have a loosely organized series of courts which overlap, conflict, and pull at cross-purposes.

2. That the jurisdiction of the different courts is ambiguous and confused, and that they are not properly correlated so as to facilitate the transaction of business with efficiency and dispatch.

3. That the present judicial organization affords no opportunity for specialization, which is said to be absolutely indispensable if the courts are to act intelligently on the intricate and complex issues of modern life. The time has passed when a single judge can know all the law, or any considerable part of it. And when a judge is obliged to try all sorts of cases, he is likely to be at a disadvantage in dealing with the legal specialists who practice before him.

4. That the rules of procedure obtaining in American state courts are archaic and obsolete, and that they encourage shystering and waste of time and frequently lead to the frustration of justice on purely technical grounds.

5. That the system of selecting judges is such that too many persons of inferior ability are elevated to the bench.

The remedies proposed for these conditions are many. The one which has perhaps the greatest number of distinguished adherents in the legal profession, and which has the endorsement of the committee of publicists who framed the Model State Constitution, is the proposal for the creation of a unified court of judicature for the entire state. At the head of this court would be a chief justice endowed with power to run the court as a business institution. Associated with the chief justice would be a judicial council, whose duty would be to formulate rules of practice and procedure and to revise the same as expediency might dictate. The court would be divided in several ways. There would be a division with judges in all parts of the state for the trial of petty cases; there would be a similar division for general trial work; there might be a third division for appellate work; and there would be a supreme court division for the final review of appealed cases. But administratively all of these divisions would be parts of a single court under the administrative headship of the chief justice. There would be presiding judges in each division, who under the direction of the chief justice would assign the various judges to their duties, would control the dockets, and move the judges about so as to expedite the transaction of business. Each of the major divisions outlined above might be subdivided so as to create special tribunals to deal with special branches of law, but they would nevertheless remain a part of the general court and under its administrative head. The judges should preferably be appointed for life or for very long terms; but with this type of organization it is believed that election by popular vote would be less objectionable than at present.

The Judicial Veto in the States

State courts exercise the power to declare laws unconstitutional in the same way as the federal courts. For the most part they confine their interposition to acts contrary to the state constitution, but they have the power to declare state laws void on the ground of conflict with the Federal Constitution. On highly controversial questions the state courts which are subject to popular election are less inclined to overthrow on constitutional grounds legislation that is strongly demanded by the people than are the federal courts.

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PART V
LOCAL GOVERNMENT IN THE UNITED STATES

CHAPTER XXV

COUNTY AND TOWN GOVERNMENT

I. COUNTY GOVERNMENT

One very often sees a map of his state that is overlaid with a patchwork of colors, each separate patch of color representing a different county. The county in all of the states except Louisiana, where the name "parish" is used, is the largest political subdivision. Taking the 48 states together there are more than 3,000 counties in this country. The number of counties in some states is so great that no one can pretend to remember them all, while other states have a relatively small number of counties. The state having the largest number of counties is Texas, with 253, and the state having the smallest number is Delaware, with only 3. The average number of counties per state is about 60. There are of course extreme variations among counties as to size and population. Custer County, Montana, is almost as large as the states of Massachusetts, Connecticut, and New Hampshire combined, while Bristol County, Rhode Island, on the other extreme, is not as large as the average voting precinct in Montana. Cochran County, Texas, is reported to have a population of 65, while Cook County, Illinois, has more than 3,000,000 inhabitants.

What Is a County?

Just what is a county? That is not altogether an easy question to answer, because a county is not exactly what most people seem to think it is. To the average person a county appears to be merely a portion of the state in which the people carry on government for local purposes. That is true; but it represents only part of the truth. A county is more than just a subdivision of the state for local government purposes, and was originally intended and primarily used for other purposes. It will be easier to understand the county of the present if we know something of the county of the past, and how it came to be what it is today.

When county government was first established in this country it was not so much designed to serve as a unit of local government as it was to serve as a district for the administration of the general affairs of the colony. It was a district for the levy and collection of taxes, a district for the administration of justice, a district for the conduct of elections, and a district for the administration of the militia. It was impossible for all of the affairs of the colony to be administered by officials stationed at the capital of the colony, and therefore the county was constituted as a convenient administrative district. In each county were stationed a number of officials (sheriff, recorder, coroner, clerk, judges, etc.) who were appointed by the governor of the colony and were regarded as general rather than local officials. They were not responsible to the people of the county, and were in a sense nothing more than deputies within the county of the governor and other colonial officials.

After the American Revolution the county began to pass through a profound metamorphosis. The power to choose county officials was taken from the governor and bestowed first upon the state legislature and later upon the people of the county. When this latter change took place the people of the county naturally ceased to think of county officials as agents of the state government and began to regard them as essentially local officers. Then, too, in course of time many functions of local government were bestowed upon the county. It was made a unit for the management of schools, for the care of the poor, and for the improvement and maintenance of roads. So the county came to possess a hybrid character. It was the agent of the state government for the performance of various tasks of state government, and it was the agent of the people of the locality for the performance of various tasks of local government. These two sets of functions were performed by the same officials, and were so mixed up that the people could not readily distinguish one from the other. Only in the New England states was the original character of the county preserved. There the county remained and is today primarily a district for the administration of state functions, such as the administration of justice, the collection of taxes, and the keeping of records of documents of title. Local government in New England is carried on almost exclusively by the towns, and the people of that part of the country seldom think of the county as a part of their system of local government. In all other sections of the country, however, the county serves as a primary unit of local government as well as an administrative district of the

state; and it is probably true that the people in those states think of the county as being preëminently an agency of local government.

How Counties Are Created

In the absence of any restricting provisions in the state constitution, full power to create, alter, or abolish counties belongs to the state legislature. Nearly all of the state constitutions now contain certain provisions limiting the legislature's power with reference to county government. In some states the legislature may not create a new county without the sanction of a majority of the qualified voters residing within the limits of the proposed county. In many states the legislature is forbidden to create a county having less than a specified area or a specified number of inhabitants. A number of state constitutions forbid the legislature to create counties by special act, and a few state constitutions prescribe the minimum tax valuation for new counties. There are similar limitations with regard to the changing of county boundaries and the location of county seats. The power of the legislature to change the form of county government is also subject to extensive constitutional restrictions in many states.

The Work of County Government

For convenience the work of county government will be considered under the two heads of state functions and local functions. It should be understood, however, that these two sets of functions are frequently so closely interwoven as to be almost indistinguishable.

Historically, the first of the state functions is that of judicial administration. Every county was in the beginning and still is a judicial district. The capital, or county seat, of every county is the place where the courthouse is located, i. e., where the judicial business is transacted. In every county there are judicial tribunals whose prime concern is the enforcement, not of local acts and ordinances, but of state law. Associated with these tribunals are a number of administrative officials, such as the sheriff, the county clerk, and the prosecuting attorney, whose chief business is to assist the courts in the administration of justice.

Next in historical rank, perhaps, is the assessment and collection of taxes. The county now serves as a district for the levy and collec-

tion of both state and local taxes, but it was originally concerned almost exclusively with state taxes.

The county has also served from the very beginning as a district for the conduct of state elections. It is now a district for the conduct of local elections as well, but at a time when no county or local officials were elected the county served as a district for state elections. In each county there is an official or board which has the duty of preparing ballots, fixing the location of polling places, choosing election officials, canvassing returns, and issuing certificates of election.

The county from the earliest times has been a district for the recording of deeds, mortgages, and other legal instruments. In every county there is an office where such documents may be recorded and where the records are maintained.

The county is also a historic district for the probation, or official proof of wills, and for the administration under legal supervision of the estates of deceased persons. There is in each county an official who has authority to admit wills to probate and to supervise the administration of estates.

The county at one time was an important district for military administration. Each county had its own divisions of troops, under a county lieutenant or sergeant-major. This function has now ceased to be of any consequence.

The county serves as a district for the maintenance of peace and order. This now is probably as much a local as a state function, although it usually involves the enforcement of state law. The sheriff is the peace officer of the county. In the cities the sheriff is superseded by the municipal police, but he retains his police duties in the rural parts of the county.

Of late years a great many new state functions have devolved upon the county. In many states the county has become a district for the administration of pure food laws, health laws, fish and game laws, agricultural aid laws, and many other types of modern social and economic legislation.

Of the local functions of the county, one of the earliest was the relief of the poor. At present there is a tendency for the state government to take over this work or to undertake to supervise county activities; but the maintenance of almhouses and poor farms and administering outdoor relief are still essentially local functions.

The maintenance and management of schools is another function which, though originally local, now shows a tendency to evolve into a state function. State school codes have become so comprehensive

that the county now seems hardly more than an administrative unit of the state school system; but in most states it is still the basic unit for school organization and administration.

The construction and maintenance of roads was at one time wholly a local affair, and the county was the chief unit of local government for that purpose. In recent times there has been an enormous increase of state road building, but this is confined principally to main thoroughfares and county roads still greatly exceed state roads in both number and total mileage.

Other functions of local government which have lately come within the scope of county government are the establishment and maintenance of parks, the drainage of lands, the provision of hospitals, and in some cases the provision and operation of libraries.

The Different Types of County Government

There are three main types of county government. First there is the New England type, the characteristic feature of which is that the county is almost wholly an administrative subdivision of the state and has very few local government functions. In some of the New England states very few of the county officials are elected by popular vote. The second distinct type is found in the South and the Far West where the county (leaving incorporated municipalities out of consideration) is the primary unit of local government and at the same time serves as an important district for state administration. The third type, generally known as the mixed system, prevails in the states of the North Atlantic region and the Middle West. Under this system the county is divided into towns or townships which assume various functions of local government but do not monopolize the field of local government as in New England. The county in these states performs some of the functions of local government and leaves others to the towns; the county also acts as an important district in state administration.

The Organization of County Government

The pivotal organ of county government is the county board. More than half of the states have a small county board of three, five, or seven members elected at large by the voters of the county. Eight states have large county boards composed of one or more members chosen to represent each of the various townships. In a few of the states the county board is made up of the county judge sitting

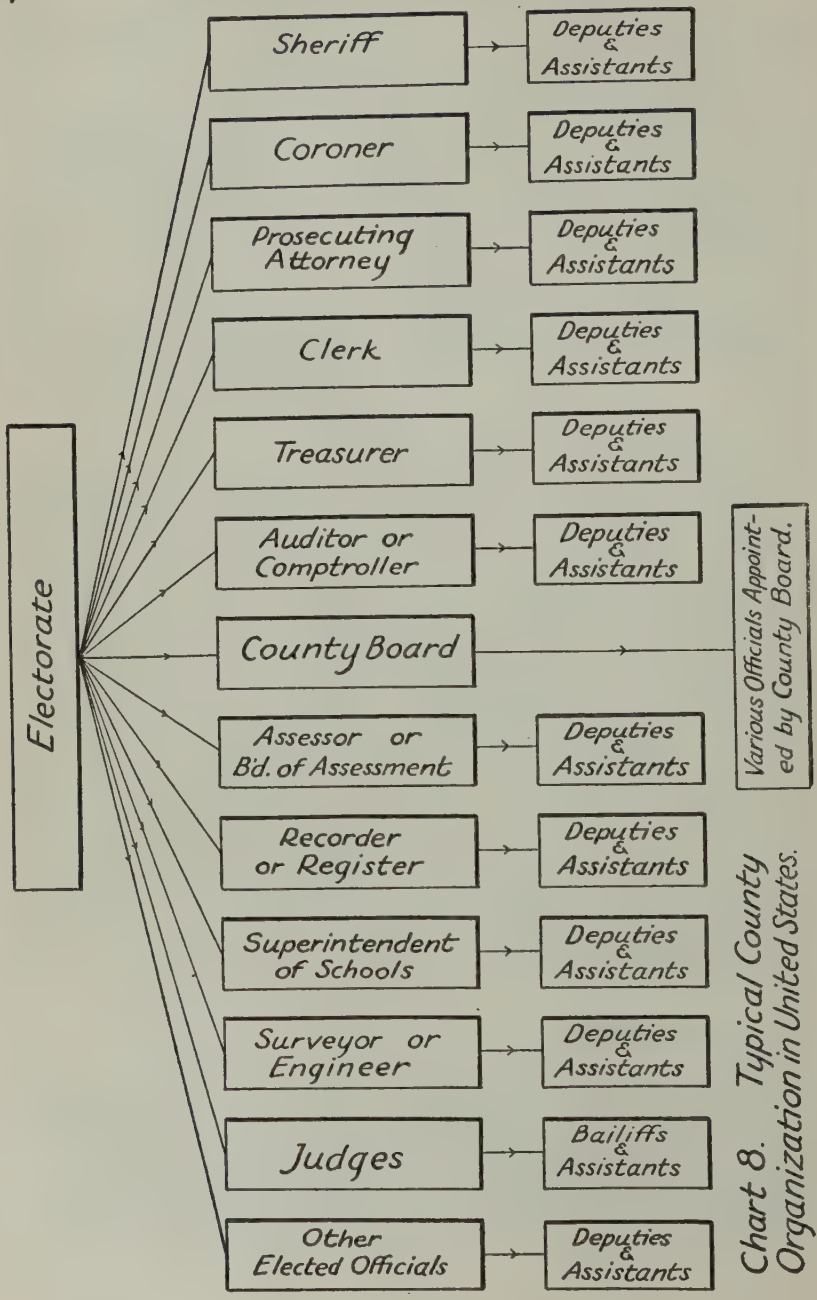

Chart 8. Typical County Organization in United States.

with the justices of peace of the county; and in a few other states the county board consists of the county judge sitting with a number of elected county commissioners. The name most commonly applied to the county board is board of county commissioners, but it is also known as the board of supervisors, the levy court, the county court, the fiscal court, and the commissioners court. The duties of the county board are primarily financial. It passes upon claims against the county; orders the payment of valid claims; appropriates money for the various items of expenditure; receives bids and lets contracts for various kinds of construction work; purchases supplies, materials, and equipment; acts as a board of review of assessments; fixes the tax rate; cares for county property, and so on and so forth.

In addition to the county board there are in every county a dozen or more officials who are usually elected by popular vote and might be called the heads of departments. The most prominent of these are the county judge, the county clerk, the prosecuting attorney, the sheriff, the coroner, the assessor, the auditor or comptroller, the recorder or register, the surveyor or engineer, and the superintendent of schools. Besides these elected officials there is usually a considerable number of appointed officials, appointed as a rule by the county board. The more common of these are the superintendent of the almshouse or poor farm, the county health officer, the road superintendent, the county engineer (sometimes), jailers, inspectors, and clerks.

The significant thing about county organization is its utter lack of unity. There is no executive head. The county board has very little administrative authority, even over officials appointed by it. Nor does it have legislative power to enable it to attempt to coordinate and regulate the work of the various county offices and departments. The duties of county officials are in the main defined and determined by the state legislature; and consequently each elected official, once in office, is practically free to go his own way and administer his office without supervision He is responsible only to the people, and the people have so many things to watch that they cannot and do not follow any official very closely.[1]

[1] PRINCIPAL COUNTY OFFICIALS AND THEIR DUTIES

The County Judge. In most states the county judge is essentially a judicial officer whose duty it is to preside over the general trial court of the county. In a few states he is chairman of the county board, and has important administrative functions.

The Prosecuting Attorney. This official is found in all of the states under one title or another. Sometimes he represents a judicial district containing

The Need for Reform in County Government

The tasks of county government are among the most important that government has to perform, but the machinery of county government is very poorly adapted to the expeditious and efficient performance of those tasks. It is perfectly true that in most states county government goes on year after year without exciting much comment or engendering great dissatisfaction. And yet when one looks beneath the surface of things, sees how much waste motion there is, how much needless expenditure of money there is, and how inefficiently the work is carried on, the wonder is that the wrath of the people has not long ago broken out against county government. The explanation lies in the fact that county government is predominantly administrative, and that the people rarely have enough interest in administrative routine to pay any attention to it. County government is near at hand, but the average citizen

more than one county. His duties are to represent the state in bringing indictments and prosecuting violators of state law. He also acts as attorney for the county in suits in which it is a defendant. He also serves as legal adviser of the county board and other county officials.

The County Clerk. The county clerk is generally secretary of the county board and custodian of all of its documents and papers. He is responsible in most states for the issuance of various kinds of licenses. In many states he is the chief election official of the county. In a great number of states the county clerk is clerk of the general trial court of the county, but there are a good many states which have a separate official to act as clerk of the court.

The Sheriff. The principal duties of the sheriff are to act as the executive officer of the judicial tribunals of the county, to maintain peace and order throughout the county, and to act as keeper of the county jail.

The Coroner. The chief function of the coroner is to conduct inquests in cases where persons have died under suspicious or unknown circumstances, in order to ascertain whether or not the death was due to natural causes. A number of states have abolished this office and have conferred its duties upon a medical examiner under the prosecuting attorney.

The County Assessor. Not all states have a separate officer for the assessment of property for taxation, but most of the western states have. In the eastern states the work of assessment is done very largely by town officials, or by ward officials in the cities.

The County Treasurer. This officer is usually the collector of taxes and the custodian of all of the moneys of the county. He is also the disbursing officer of the county.

The County Auditor or Comptroller. This office does not exist in a number of the states. Where the office is found its function is mainly to inspect and audit the accounts of the various county officials, and to perform other duties of a clerical nature. In some of the states the auditor or comptroller must approve all warrants drawn upon the county treasurer before they can

does not begin to know as much about it as he does about state and national government, or even city government. And he never will. The work of state government and national government is largely political, and hence involves issues which attract wide attention and stir up much interest. To a certain degree the same is true of city government. But county government, as at present constituted, involves hardly anything but administrative routine, and this cannot be expected to command the interest of the people.

Let us now turn our attention to some of the more conspicuous defects of county government. One of the fundamental troubles in all states is that the work of county government is not only administrative but has to do very largely with state administration, and for this reason does not come directly home to the people of the county. The voters in the county have no particular interest in the routine affairs of state administration, but are obliged nevertheless to elect county officials whose duties very largely consist of state administration. It is not surprising, therefore, that the people's interest in county elections is not sufficient to insure a careful choice of county officials. Paradoxically enough, too, the state government, which is most directly concerned about the character of county administration of state functions, has no effective means of controlling or influencing the processes of county government. With

be paid. In one or two states the auditor acts as county assessor, and in some states he acts as a dispenser of licenses.

The County Recorder or Register. This officer administers the office in which deeds, mortgages, and other legal instruments are recorded.

The County Surveyor or Engineer. The functions of surveyor and engineer are very often combined in one office, but in some states separate offices are maintained. The original work of the county surveyor was to run boundary lines and maintain the records thereof. This work has declined in importance. The county engineer is responsible for laying out county roads and supervising their construction, and for various other engineering activities of the county government.

The County Superintendent of Schools. This official supervises the administration of state school laws, particularly with reference to the distribution of state funds, attendance, the certification of teachers and the keeping of records.

County Health Officers. Many states have a county board of health, which selects a physician as paid secretary. Other states provide for a county health officer appointed by the county board. County health officials have to do mainly with the enforcement of the state health and sanitary code.

County Poor Officers. There is in nearly all of the states a superintendent or commissioner of the poor. He is generally appointed by the county board, although in a few instances he is elected. He has charge of the county almshouse and poor farm, and very often also is in charge of the dispensation of charity in the form of outdoor relief.

the people of the county more or less indifferent to a large part of the work of county government and the state unable to exert effective control over it, it is inevitable that it should be carried on in a careless, slipshod, and inefficient manner. One of the most needed reforms in county government is that some means should be found to relieve the people of the county of the burden of voting for an array of officials who are essentially state officials and to render these officials fully responsible to the state government.

Another cardinal defect in county government is the headless and disjointed way in which it is organized. To get the best results in any field of human endeavor involving the coöperation of large numbers of people, it is necessary to have a simple and unified organization under a responsible head. County government is everything but simple and unified, and has no head whatsoever. It is a jumbled mosaic of independent offices and boards, responsible to no one in particular and to every one in general. We cannot even hope for good results in county government until it is reconstructed in conformity with the plain and simple principles of sound business organization.

Another difficulty in county government is that the average county is too large to serve as a wholly satisfactory unit of local government and too small to give the best results as a state administrative district. This difficulty can only be met by a complete change in the basic areas of local government, which will make it possible to group a number of counties together for state administrative purposes and to subdivide them as minutely as need be for purposes of local government.

The county is the one part of our governmental system which has resisted all reform movements. In city government, state government, and even in national government there have been many innovations and changes; but the county remains today substantially as it was a century or more ago. Numerous county reforms have been proposed, but none have been adopted. Nearly all of the proposed reforms in county government have been based upon the idea of centralization. The reform which is being most strongly urged at the present time is that the county board shall be made a real governing body with power to appoint and remove all county officials, except possibly the sheriff and the prosecuting attorney who would be appointed by the governor of the state. Another proposal of kindred character is that the county board should be made responsible for the entire work of county government, but that it should choose a county manager to act as chief executive under its

direction and control. The county manager would then choose the incumbents of all the county offices, except probably those of sheriff and prosecuting attorney. The merits of this plan are much the same as those of the manager plan of city government.

The City-County Problem

Counties containing one or more large cities constitute a peculiar problem. In such cases there is bound to be much overlapping of city and county government, frequent conflicts of jurisdiction, much unnecessary duplication of work, and necessarily a great deal of confusion and inefficiency. To correct faults of this kind a consolidation of city and county government has been effected in several large metropolitan centers of which Baltimore, Denver, Philadelphia, San Francisco, and St. Louis are prominent examples. In these places the boundaries of city and county are identical, and one government performs the functions of both city and county government. Experience has shown that great economies and much improvement in service can be brought about by such a consolidation of city and county governments.

II. TOWN AND TOWNSHIP GOVERNMENT

Nature and Functions of the New England Town

The New England town is a portion of the state which has acquired the right of local self-government. It is not merely a subdivision of the county; towns existed in many of the New England states before counties were created. Nor is the town the same thing as a city or a village; a town may be entirely rural in character, or it may contain one or several villages and urban communities. There is no regularity in town boundaries and no equality of area or population. A town is merely a region which for geographical, economic, or social reasons has been set apart as a self-governing local community.

The legal authority of the town is derived from the state legislature, and the legislatures of the New England states annually pass many acts respecting the affairs of the different towns of the state. The functions of the town embrace the levy and collection of taxes, the administration of poor relief, the support and management of schools, the construction and repair of roads and bridges, the maintenance of peace and order, and a great many special functions which have been added from time to time by legislative act.

How the New England Town Is Governed

The most striking feature of the New England town system is the town meeting. Once a year, and oftener upon special summons, all of the qualified voters of the town are notified to meet together in the town hall. The purposes of this meeting are to elect town officers for the ensuing year, to levy taxes, vote appropriations, and to consider and decide other questions of local importance.

The town meeting chooses the town board, generally called the board of selectmen. The town board carries on the business of the town in the intervals between town meetings, appoints certain town officials, audits claims against the town, prepares warrants for the town meeting, lays out highways, supervises the conduct of elections, and in general serves as an executive committee for the town.

The town clerk is probably the most important single official chosen by the town meeting. He is secretary of the town meeting, secretary of the town board, has charge of the registration of births and deaths, issues marriage licenses and sometimes other licenses, and in some of the states serves as recorder of deeds, mortgages, and other instruments.

The town treasurer is also chosen by the town meeting. He is the collector and receiver of taxes, and the custodian of the moneys of the town. Upon proper authorization from the town meeting or board of selectmen, he disburses the funds of the town.

The town constable is the police and peace officer of the town. He executes the processes of the justices of the peace, arrests offenders against the by-laws and ordinances of the town and the laws of the state, and in some states acts as tax collector. He is generally chosen by the town meeting.

The school committee or school board is chosen by the town meeting. Its duties are to build schools, employ teachers, and regulate the course of study in accordance with the law of the state.

The overseers of the poor may be chosen by the town meeting or the town board, usually the former. Their duties are to administer poor relief and manage the almshouse and poor farm.

The assessors are chosen either by the town meeting or the town board. Their principal function is to assess property for taxation.

In various parts of New England many other town officials are found. Among these may be mentioned water boards, library boards, park boards, poundkeepers, fish wardens, fence viewers, and sealers of weights and measures.

In the rural or semi-rural sections of New England the town system

still renders excellent service; but in the urban sections town government has proved less adequate. In a large urban community it is not possible for all of the voters to attend the town meeting, and as a matter of practice most of them never do. The town meetings thus tend to fall into the hands of interested groups of politicians and their supporters, who frequently run things with a high hand. Moreover, the problems of urban government are on the whole too technical and complex to be handled effectively through the loosely organized system of administration which is characteristic of town government.

The Town or Township Outside of New England

In some 17 states of the Middle West and North Atlantic region counties are divided into towns or townships. In such states as New York, New Jersey, and Pennsylvania these towns or townships grew up before the counties and are somewhat similar to the New England town except for the fact that they do not monopolize the function of local government as does the New England town. In the states west of the Alleghenies, however, the township is an arbitrary and artificial subdivision of the county, and is usually six miles square. Where these towns have any local government functions at all, they serve as units for the levy and collection of taxes, the conduct of elections, the relief of the poor, the improvement and maintenance of roads, and certain other minor local matters. In most of the 17 states mentioned above these functions have been so completely taken over by the county that the average citizen has little contact with the town government.

In organization these townships are not wholly unlike the New England town, except for the fact that the town meeting has been largely abandoned. In 9 of the 17 the law provides for town meetings, but the law is not always faithfully followed.

There is usually a township board, called the board of trustees. In some states the board consists of persons elected to serve as a board, and in other states it is an *ex officio* body made up of certain designated township officers. In several of the states the chairman of the township board represents the township on the county board of supervisors. The usual township officers are the clerk, the treasurer, the assessor, the constable, the overseers of the poor, and the road commissioner. Justices of the peace are elected by townships in some of the states.

Outside of New England the town or township has ceased to be a

vital unit of government. Its functions have gradually been usurped by the county, and because of the purely artificial character of the township the people are not attached to it and take little interest in township affairs. In Ohio, Michigan, and one or two other states which have retained the township there is a growing sentiment in favor of abandoning it altogether as a unit of government.

CHAPTER XXVI

CITY GOVERNMENT

When, on the 30th of April, 1789, George Washington was inaugurated as President of the United States there was not a city in the Western Hemisphere as large as Waterloo, Iowa, today. The corner of Wall and Broad Streets, New York City, where Washington took the oath of office, was the center of a booming metropolis of 33,000 soul, then as now the largest city of the western world, and destined in 1920 to contain over a million more inhabitants than were to be found in the entire United States in 1789. There were only about twenty incorporated cities in the United States in 1789, and the urban population of the country was not quite four per cent. of the total. According to the census of 1920 there are 15,692 incorporated municipalities in the United States, and 51.9 per cent. of the population of the country is urban. We have now 68 cities with a population of more than 100,000 each, 219 with a population of between 25,000 and 100,000, 459 with a population of 10,000 to 25,000 and 14,956 with a population ranging from a few hundred up to 10,000. The city, which was originally of negligible importance in our governmental affairs, has come to be of supreme importance. We have in fact become a nation of cities.

The Nature of City Government

Lawyers usually describe a city as a municipal corporation. That means that the inhabitants of the territory included within the boundaries of the city have been permitted to organize themselves as a corporation for the purpose of carrying on local government, just as a number of people may organize a corporation to engage in business, to operate a university, or to conduct the affairs of a social club. In this respect city government differs from town, county, state, and national government. There are some states in which towns and counties are regarded as corporations, but this was not originally the case and is not always the rule now.

When people organize a corporation, they bring into being what

is called an artificial legal person, i. e., something which, though it does not have any bodily existence as human beings have, has in the eyes of the law most of the legal characteristics of a human being. It is a person before the law and as such can acquire, own, and dispose of property, can sue and be sued, and can enjoy nearly all of the civil rights and discharge nearly all of the ordinary civil obligations of a human being. When a large number of persons are associated together in carrying on a business or some sort of social activity, it is a great advantage to be able to organize a corporation; for then they appear before the law as one person. It is likewise a great advantage for the people of a community who desire to carry on local government to be organized as a corporation and to appear before the law as one person. That is the reason why cities are always organized as municipal corporations.

The usual way of creating a corporation in this country, whether for private purposes or for governmental purposes, is by an act of state government.[1] The state grants to the persons wishing to form a corporation a charter, which authorizes them to form a corporation, determines what powers and rights the corporation shall have, and prescribes the manner in which it shall be organized and conduct its affairs. The power to grant charters to corporations once belonged exclusively to the state legislature, but in many of the states the constitution now directs the legislature to pass general laws under which corporations may be formed without a special act of the legislature in each case. A municipal corporation, a city, can no more enjoy corporate powers and privileges without a charter or grant from the state than a private corporation. Every city, therefore, has a charter, or something corresponding to a charter, which creates it a corporation, defines its rights, powers, and responsibilities, and determines the character of its organization and procedure. This charter is the basic law of the city.

The Relation of the City to the State

The dependence of the city upon the state for its charter has entailed a long and complicated chain of legal circumstances. In colonial times the granting of municipal charters was one of the functions of the governor, but after the Revolution that power was transferred to the state legislature. The city thus became a mere

[1] The national government may create corporations to engage in interstate and foreign commerce, and exercise other federal powers, but it does not often do so.

creature of the state legislature. It could exercise no powers unless they were expressly granted by the state legislature in the city charter or in an act of the legislature supplementing the city charter. The legislature could revoke the charter of the city at will, modify its powers, change its organization, and compel it to perform any specific acts commanded by the legislature. After a time state legislatures began to abuse their autocratic power over cities. They began to interfere in local affairs for malicious and corrupt purposes. They would pass laws arbitrarily compelling a particular city to raise the salary of a certain official who had influential friends in the legislature or to reduce the salary of officials who had offended the legislature, laws obliging a city to create or abolish jobs at the whim of the legislature, or laws forcing a city to improve certain streets or construct certain public works whether they were desired by the people of the city or not. When the political party in control of the city government was not the same as that in control of the legislature it would sometimes use its power to change the organization of the government of the city to unseat the party in control of the city. To make a long story short, the state legislature forgot all about the city's claim of the right of local self-government and proceeded to use the city as a political plaything.

Then there was another difficulty. Even though the legislature might not be given to malicious meddling in municipal affairs, the city was in a helpless position because it could take no action that was not authorized by the state legislature. This meant that if the legislature failed to give the city all the powers it needed in the charter or failed to pass supplementary laws giving the city the necessary powers, the city had constantly to be coming to the legislature with requests for authority to do this, that or the other thing which had not been mentioned by the legislature in its grant of powers to the city. This was not only inconvenient; it was at times positively calamitous. The legislature might not be in session at a time when the city, on account of an emergency like a great fire, earthquake, tornado, or flood, might be in greatest need of an extension of its powers. Moreover, the legislature, consisting very largely of persons from the rural sections of the state, was frequently unable to appreciate the problems and difficulties of city government and therefore unwilling to give the city the powers essential to the proper performance of its functions.

Finally the evils of legislative supremacy over cities became so unbearable that people began to demand that the power of the legislature over cities should be limited and circumscribed. This was

accomplished by the insertion of various provisions in state constitutions restricting the power of the legislature to deal with cities. One of the commonest of these was that the legislature should enact no special law with reference to cities. This meant that the legislature could not grant a charter or pass an act relating to one city alone, but must legislate for cities in such form as to apply to all cities or to all cities of a given class. Another common limitation on the power of the legislature was that it should have no power to grant a franchise for the use of the streets of the city without the consent of the city authorities. Another was that cities should have the right to choose their own officers. Still another was that the legislature should have no power to create a state board with power to tax the people of the city for the construction of municipal public works. A great many more of similar character might be mentioned.

These many limitations upon the legislature's freedom in dealing with cities did have the effect of correcting some of the most flagrant abuses of legislative domination, but they did not give cities any great amount of liberty in managing their own concerns. The city was still without power to act except by legislative authorization, and legislatures were not in the habit of bestowing generous powers upon cities individually or collectively. In 1876, therefore, a new reform, known as municipal home rule, appeared. Missouri was the first state to adopt municipal home rule. It has now spread to 15 other states. Municipal home rule is established by putting a provision into the state constitution authorizing cities to frame and adopt their own charters, and to exercise powers of local self-government without the necessity of action on the part of the state legislature. In other words, instead of the legislature being the source of municipal power, the state constitution is the source of municipal power. There are a great many practical difficulties connected with the operation of municipal home rule; for it is not always possible to draw a clear and sharp line between activities that concern the city alone and those which affect the state as a whole. It is generally agreed, however, that municipal home rule has wrought a great improvement in the status of the city and has put the relation of the city and the state upon a much more satisfactory basis.

The Work of City Government

The work of city government is as varied as city life. The city of course carries on the usual operative activities of government. It conducts elections for the choice of city officials, makes arrange-

ments for the selection of large numbers of officials and employees by appointment, collects revenues, disburses funds, keeps accounts, and so forth. The city also acts as the agent of the state government in the administration of certain branches of the state law within the city. The city police force serves the state as much as the city; the city school system is a part of the state educational system; the city assists the state in the enforcement of its public health code; the municipal courts enforce state as well as municipal law—these are a few of the ways in which the city supplements the state government.

On the service side of government the activities of the city are almost innumerable. It protects the person and property of the individual against the criminal and the wrongdoer; it protects property against destruction by fire; it regulates the construction of buildings, and of streets and highways so as to protect life and limb; it supplies water for domestic and commercial use; it constructs sewers; it lays out and paves streets; it cleans streets and collects and disposes of garbage and other wastes; it lights the streets; it regulates street traffic; it establishes and maintains parks and playgrounds; it regulates the sale of foodstuffs to prevent the dissemination of disease and the perpetration of fraud; it regulates the services and fares of street railways and motor "busses". The foregoing are typical of the manifold services rendered by city government. Without these services city life would be intolerable and impossible.

Various Forms of City Government

The original form of city government in this country was exceedingly simple. There was a single organ of government known as the city council. The city council was made up of the mayor, the recorder, the aldermen, and the assistants or councilmen. The mayor was appointed by the governor, the state legislature, or the city council. He was the ceremonial head of the city, was presiding officer of the council, and very often presided over the principal court of the city. But he was an integral part of the city council, and was not set apart from the council as head of an independent branch of government. The recorder was usually chosen in the same way as the mayor, and was also identified with the council. He was the law officer of the city. The aldermen and assistants (sometimes called councilmen) were elected from wards by the voters thereof. The chief difference between them was that the aldermen

were justices of the peace as well as members of the council. The mayor, recorder, aldermen, and assistants all sat together as one body, and as such managed all the affairs of the city.

Shortly after the American Revolution this unified system of city government began to break down. Slowly the check-and-balance principle supplanted the principle of organic unity, and by 1850 city government was closely patterned after the system prevailing in the national government and the states. The mayor was made elective by popular vote, was given the veto power, was given certain independent administrative functions, and eventually ceased to be presiding officer of the council. His judicial functions were taken away and conferred upon courts wholly independent of other branches of city government. The council was divided into two houses, the upper house corresponding to the senate in the state and national governments and the lower house corresponding to the house of representatives. The power to select the various administrative officials was taken away from the council and either bestowed upon the mayor, the mayor and council jointly, or upon the people directly. City government, in fact, developed along about the same lines as state government and came to be quite as disunified and demoralized.

This disintegrated scheme of government proved in the end to be very disastrous. The period during which it was in vogue was characterized by such monstrous corruption and such inexcusable inefficiency that American city government became the world's stock example of the shortcomings of democracy. About 1890 a reform wave set in. Cities all over the country began to adopt new charters with the object of improving the form of their government. The two-chambered council was gradually abandoned; the number of officials elected by popular vote was greatly reduced; the office of mayor was measurably strengthened and given increased independence. In 1901 an entirely new system of municipal government, known as the commission plan, appeared, and in course of ten or a dozen years several hundred cities had adopted this system of government. Then in 1908 the city manager plan made its appearance, and now between three and four hundred cities have adopted that plan. The result is that we do not have a uniform type of city government in this country. There are three or possibly four principal types and an uncounted number of variants of each. Side by side in the same state, and possibly not more than fifty miles apart, we may find cities under the manager plan, the commission plan, the reformed mayor-and-council plan, and the old-fashioned decentralized plan. To be able to understand the character of munici-

pal government in this country it is necessary to devote some attention to each of these types.

The Decentralized Plan

There are only a few examples of the old decentralized plan of city government remaining among the larger cities of the country. Among the more conspicuous examples of this type are Louisville, Ky., Wilmington, Del., and Bridgeport, Conn. Among the smaller cities and villages, however, this plan has survived to a remarkable extent. The salient features of this system of city government are: (1) a relatively large city council (occasionally with two houses) elected by wards; (2) a mayor elected by popular vote, and usually having the veto power but very little power of appointment or other administrative authority; (3) a large number of offices, boards, and commissions elected by popular vote, chosen by certain state or county officials, or appointed by the mayor and council jointly. This plan of city government has been discredited in practice and is rapidly being superseded by the newer forms of municipal organization. Its faults are legion. It conceals responsibility for official action, confuses and misleads the voter, precludes effective teamwork in the conduct of official business, induces inefficiency, and invites corruption.

The Strong Mayor Plan

The strong mayor plan is the name we choose for the reformed mayor-and-council system, because its characteristic feature is the exaltation of the office of mayor to a dominant position in the processes of city government. All or nearly all of the elective offices, boards, and commissions are swept away. The mayor, with or without the consent of the council, appoints practically all of the administrative officials of the city and has power to remove them almost at will. The mayor has the veto power, and sometimes the power to veto items. The mayor has the right to introduce measures in the council, and in some cases the mayor is entitled to a seat in the council with the right to participate in debate but not to vote. The mayor prepares and introduces the annual budget. The mayor with certain other officials may constitute a board for the letting of contracts, the fixing of salaries, and other administrative decisions. The council is small, and its members may be

elected by wards or at large. Contrasted with the mayor, it occupies a secondary position.

The strong mayor plan, with many variations of detail, has been

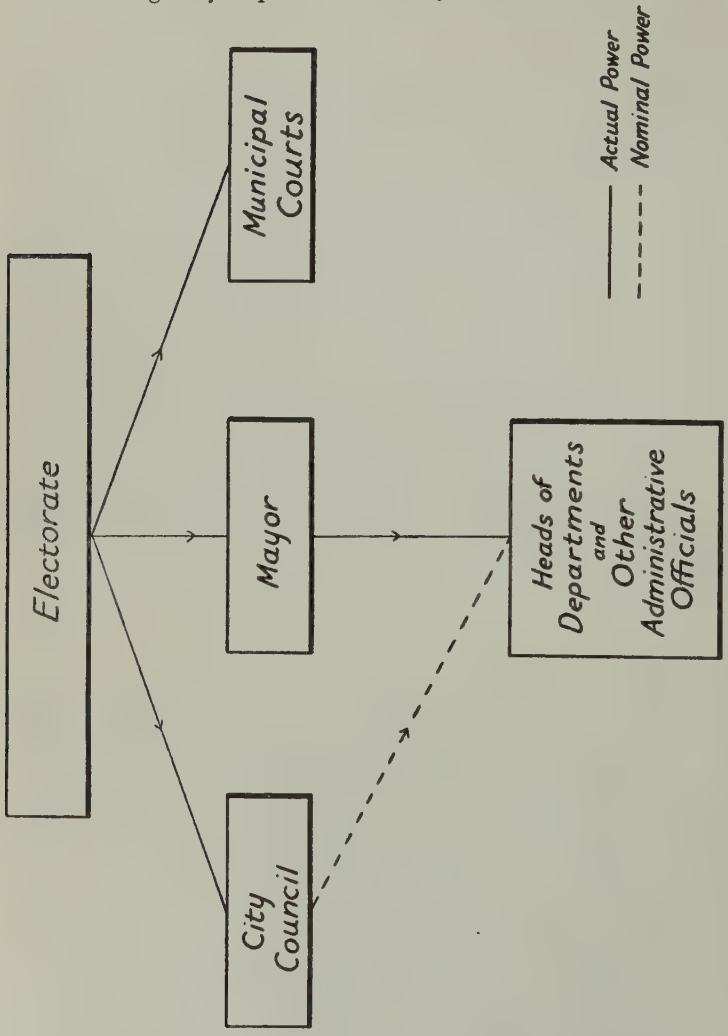

Chart 9. Strong Mayor Plan of City Government.

adopted in nearly all of the larger cities of the country. New York, Boston, Chicago, Philadelphia, Detroit, St. Louis, Baltimore, Los Angeles, San Francisco, and many others have this plan. The strong mayor plan is a great improvement over the decentralized

system of former times, and on the whole has worked fairly well. All depends upon the character of the person elected as mayor. When a man of high ideals, statesmanlike vision, and great political and administrative ability occupies the office of mayor, this plan of government produces wonderful results. But when the office of mayor is held by a scheming politician of low ideals and second-rate ability, the strong mayor plan gives very bad results. Unfortunately our system of popular election seems to give as many or more mayors of the latter type as of the former.

The Commission Plan

The commission plan originated in Galveston, Texas, in 1901. It was first used as a temporary substitute for the old system of government in order to facilitate the rehabilitation of the city after the terrible tidal wave and flood of 1900. But its advantages were so pronounced that it was soon installed as a permanent system of government and was then widely imitated in other parts of the country. The essential features of the commission plan are: (1) the concentration of all legislative and administrative powers of city government in a small board or commission of three, five, or seven members elected at large by the voters of the city; (2) the commissioners sitting together as a body serve as the city council and as the chief executive of the city; (3) each commissioner acts as the director or head of an administrative department, and all offices and agencies are consolidated into a number of departments equal to the number of commissioners; (4) the commissioners devote their full time to the work of the city and are paid adequate salaries for their services.

This plan of government has been adopted in some three or four hundred cities scattered all over the country, the largest of which are Buffalo, N. Y., Newark, N. J., and New Orleans, La. At one time it was thought that the commission plan might displace all other plans of city government, but it now seems to be on the decline. The virtues claimed for the commission plan are many, but not all of them have been realized in practice. The commission plan is simple; it eliminates the delays, deadlocks, and confusion that are incidental to check-and-balance government; it concentrates both authority and responsibility upon a small group of men selected by the people; and it gives the people the benefit of the full-time services of the commissioners for both legislative and administrative work. The chief defects of the commission plan are that as a coun-

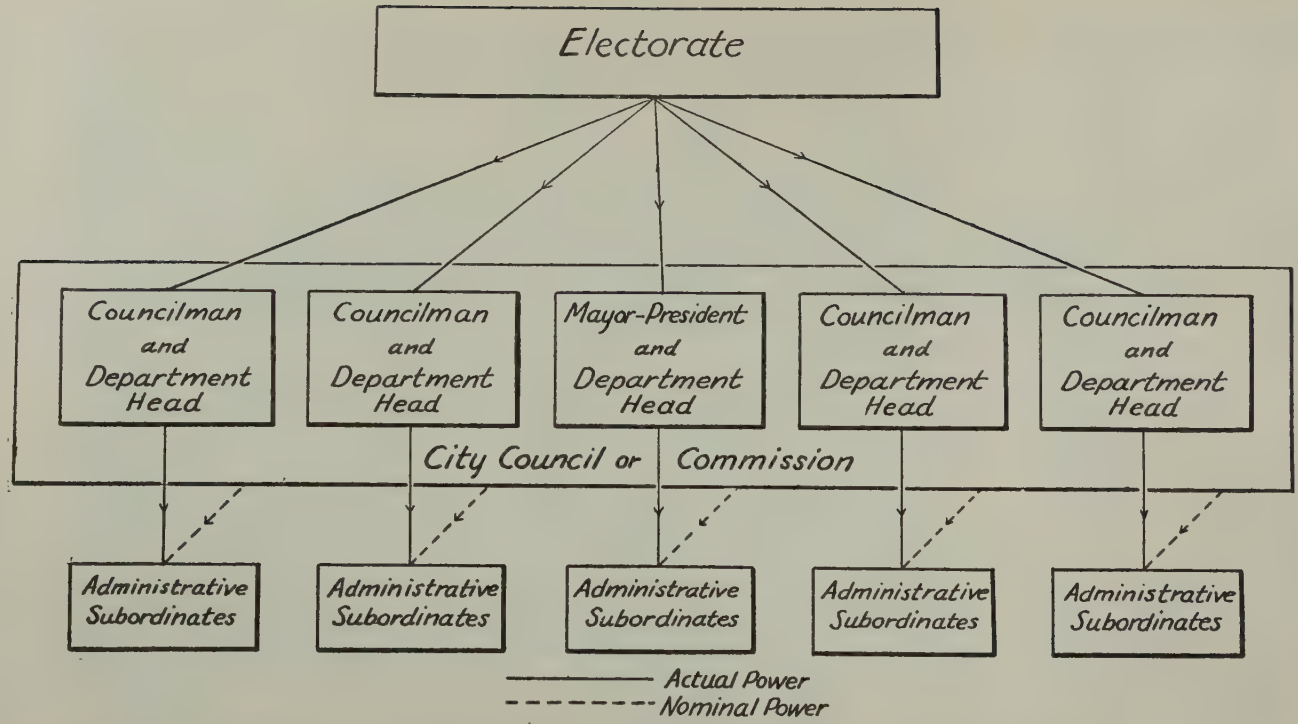

Chart 10. Commission Plan of City Government.

cil it is too small to be fairly representative of the population of a large city; that the commissioners, being chosen by popular election, are primarily political leaders and do not usually have the administrative experience or ability necessary to manage the affairs of a large administrative department; and that there is no real team-work in the administration of the business of the city, because each commissioner runs his own department pretty largely as he pleases.

The Manager Plan

The city manager plan originated in 1908 in the little city of Staunton, Va., but the commission-manager plan, which is the most widespread variant of the manager plan, was introduced in 1913 by the city of Sumter, S. C. Later in the same year the commission-manager plan was adopted by the city of Dayton, O. The manager plan has spread very rapidly, and is making more rapid headway today than ever before. The largest cities to adopt the manager plan are Cleveland, O., Cincinnati, O., Dayton, O., Grand Rapids, Mich., and Norfolk, Va., and Kansas City, Mo.

The characteristic features of the manager plan are: (1) the concentration of all legislative and administrative authority and responsibility in the city council or commission; (2) the council or commission is obliged to exercise its administrative powers through an official known as the city manager, who is appointed by the council without a definite term of office and may be removed by the council at any time; (3) the city manager is the chief administrative officer of the city and appoints all or practically all of the heads of departments and subordinate administrative officials. Under the commission-manager plan the governing body is the small commission of three, five, or seven members elected at large by the people, just as in the commission plan. In fact the plan is like the commission plan, except that the commissioners do not directly exercise any administrative functions. A number of cities under the manager plan have felt that the governing body ought to be larger and more representative than is possible with a small commission elected at large, and have accordingly provided for a council of ten or a dozen or more members to choose the city manager and transact the legislative business of the city. In Cleveland there is a council of 25 members elected by proportional representation, and in Cincinnati there is a council of 9 elected by proportional representation.

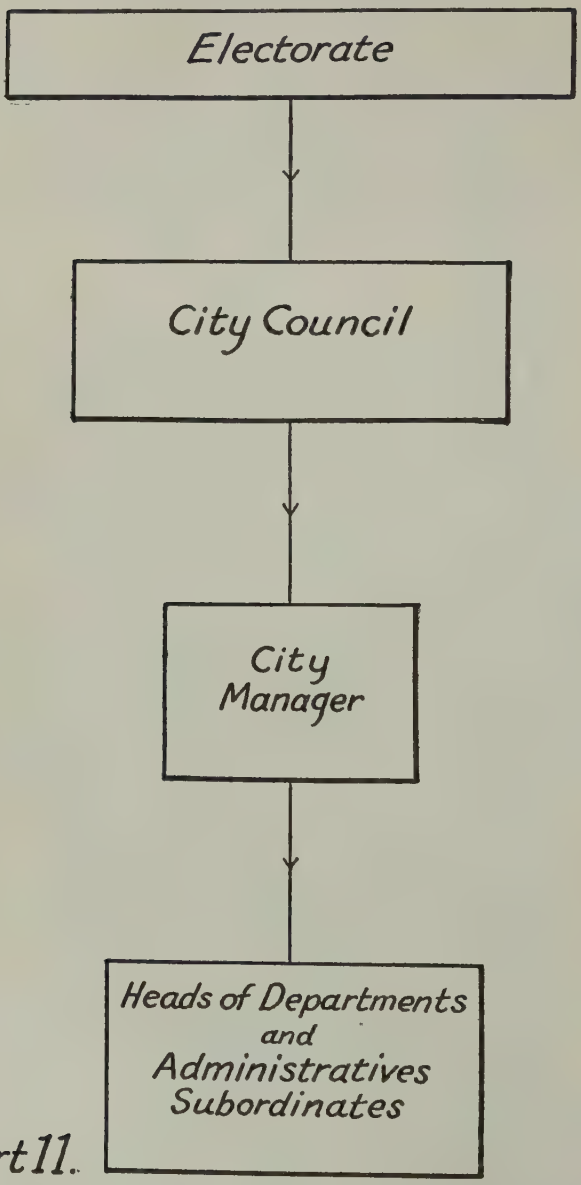

Chart 11.

Manager plan of City Government.

The manager plan is supposed to have all of the virtues of the commission plan without the corresponding defects. It brings about a complete concentration of authority and responsibility. The commission or council is responsible for determining what the city shall do, for choosing a man capable of carrying out its decisions, and for seeing to it that he does what is expected and desired. If the manager falls down on the job, it is not necessary to impeach him or to wait two or four years until the expiration of his term. The council may remove him instantly. By having the city manager appointed by the council instead of elected by the people, it is possible for more consideration to be given to the executive experience and ability of the person chosen and less to his capacity as a vote-getter. As a matter of fact, it has been assumed in most cities under the manager plan that the duty of the council or commission was to choose a trained municipal executive as city manager and to keep him in office as long as he should continue to give satisfaction. This has made possible the growth of a new profession. We now have a large number of men devoting themselves to the calling of city management, and who are called from one city to another on account of the records they have made just as school superintendents and business executives are. It is claimed, in truth, that under the manager plan the affairs of a city are conducted much as the affairs of a private business are conducted, and for that reason the manager plan brings about literally amazing improvements in the direction of efficiency and economy.

Civil Service Reform in Cities

Our cities have been much more progressive in civil service reform than the states. Over 350 cities in this country have adopted the merit system, and virtually all of the larger cities are to be included in this number. The problems involved in the application and administration of the merit system are not fundamentally different in cities than they are in state and national government.

The Initiative, Referendum, and Recall in Cities

In virtually all of the states which have the initiative, referendum, and recall these reforms have also been extended to city government. In many of the states where there is no constitutional or statutory provision for direct legislation and the recall, they have

been introduced in city government by special provisions in city charters. Except in matters of detail, the initiative, referendum, and recall operate in cities in just the same way that they do in state government.

CHAPTER XXVII

MODERN MUNICIPAL PROBLEMS

Life in the modern city is profoundly affected by two conditions; namely, the extraordinary density of population and the present-day system of industrial activity. Because of these conditions life in the United States can never again be what it was a century or more ago when these conditions did not exist. Therefore the problems of government, and especially the problems of city government, which are but the outgrowth of living conditions in the city, can never again be what they were at the time our political institutions were first established. We can well appreciate this if we inquire into the nature of the problems of the modern city.

The Effects of Congestion of Population

When a large number of people are crammed together on a small and compact area, certain difficulties are bound to arise and certain changes in modes and habits of life are bound to ensue. In the first place, we know that the more closely people are huddled together and the larger the number massed on a given area, the more difficult it is for each individual to preserve his health and physical well-being, and the greater is the prevalence of diseases and death. There are a number of reasons for this. Many of the diseases which affect mankind are readily transmitted from one person to another, and therefore spread with exceptional ease whenever people are crowded together. A great many diseases also result from drinking impure water, use of contaminated foods, failure to make proper disposal of offal and refuse matter; and of course it is perfectly apparent that congestion of population makes it more difficult to obtain pure water and pure food and to dispose of refuse and waste materials in a sanitary way. Many diseases result from the decline of bodily vigor and resistance owing to lack of light, air, and exercise; and of course congestion of population promotes rather than alleviates these conditions.

We know, too, that congestion of population gives rise to serious

difficulties in the matter of moral life. Degenerate, vicious, and immoral persons when isolated may be more or less harmless, but when brought together in large numbers they are not only bestirred to pursuits of crime and vice but contribute to the undermining of the morals of the weaker members of society. Closely related to this difficulty is the effect of congestion of population upon the security of person and property. It is a paradoxical fact that man's greatest dangers come not from the fury of the elements or the ravages of wild beasts, but from his fellow human beings. And in the crowds of the city more pains must be taken to preserve the security of person and property than in the wildest parts of the earth.

Another thing that results from congestion of population is the need for conveniences and services that are not required when population is sparse and scattered. When a highway is used by only a handful of people each day, no great social loss is experienced if it is allowed to remain in a very primitive condition, but when it is used by thousands and hundreds of thousands of people daily it must be paved and kept in condition so that traffic may move quickly and easily. When only a few people use a highway at night illumination is not necessary, but when people swarm the thoroughfares at night in hundreds and thousands illumination is indispensable. When only a few people are going to and fro each day, every person may be left to provide his own means of transportation, but when thousands upon thousands must daily go and return from home to office, store, and factory there must be some means of quick, easy, and cheap transportation for all. So it is with many other aspects of urban life, and that is why the public utility problem occupies so prominent a place in urban affairs.

The Effect of the New Economic Order

At the time our government was founded the position of the individual with respect to the economic necessities of life was one of exceptional independence. Each home, even in towns and cities, produced most of its own food and clothing; each home supplied itself with water, fuel, and light; each man worked for himself as a farmer, professional man, tradesman, or artizan; and each person to a greater or less extent was an owner of property. But beginning about 1820 a great change occurred. Machinery began to supplant handicraft methods of manufacturing; enormous factories for the production of all sorts of commodities grew up in the towns and cities; and people swarmed to the cities by the thousands and mil-

lions to obtain work in the factories. The age of specialization set in. Each person, instead of producing or sharing in the production of most of the things needed in his daily life, became a cog in a huge industrial organization devoted to the production of one or two commodities. In return for his services he was paid wages with which he had to buy the things needed to maintain life. The wage-earner did not own the factory; he did not have any proprietary interest in it. It was owned and managed by an individual or a corporation having the financial resources (called capital) necessary to purchase the machinery, land, and buildings required to operate the factory. The individual ceased to work for himself and became a mere hired man. As time went on nearly all manufacturing and merchandising on a large scale succumbed to this so-called capitalistic system. On the one hand was a relatively small group of persons who owned and controlled the means of production and of making a livelihood, and on the other hand was the great mass of people who were hired workers. This condition extended even to agriculture, though it was peculiarly characteristic of city life.

Now the effect of this so-called Industrial Revolution was to put the average person in a position of dependence and helplessness almost without precedent in the history of the race. The individual was no longer able to provide himself with food, clothing, and shelter unless he could pay for them in cash; he no longer worked for himself, but was dependent upon trade conditions over which he had no control or upon the whim of an employer for a job by means of which to earn the money to pay for the necessities of life; he no longer lived in his own home, but became a tenant occupying premises owned by another. The least disturbance in the normal processes of life would bring the average person to the verge of distress and suffering. If the street cars did not run, he could not get to work; if the gas pressure was low, he could not cook his food; if there was a coal shortage, he could not heat his house; if the water-supply was contaminated or cut off, he had no water for domestic purposes; if he was thrown out of work, he had to find another job or depend upon charity; if his rent was raised, he had to pay it or get out.

The Extension of the Functions of Government

As the great mass of people became increasingly helpless and dependent upon conditions over which they had no control, and as population came to be more and more concentrated in cities where

conditions of life were unduly difficult and hard, there was an insistent demand that government should take upon itself the burden of doing for the individual what he could no longer do for himself. This demand was abnormally strong in cities, and in responding to it city government has come to be a sort of foster parent to the inhabitants of our cities. It has taken on one task after another until now in some way and to some degree it controls and regulates nearly every phase of city life.

The Character of City Population

The population of our cities not only consists of a vast collection of people who are in a position of economic helplessness and who live under conditions which militate against a safe, healthful, wholesome, and satisfactory existence, but also of people who in large part are of foreign origin and unfamiliar with American ideas and ways of doing. More than half of the city population of this country is of foreign birth or foreign parentage, and in most of the larger cities the proportion is much higher. The alien element of the population of New York City is 72.3 per cent. of the total population, in Philadelphia it is 61.1 per cent., in Chicago 76.2 per cent. It is the fashion to speak of our cities as a melting pot for the races and peoples of the world. It would be more accurate perhaps to say that they are a mixing pot rather than a melting pot; for unfortunately the melting and absorption of the foreign elements has not been as extensive as we have been led to imagine. This of course greatly complicates the problems and difficulties of city government.

The Problem of Public Order and Public Safety

To maintain order among the teeming multitudes of our cities, to render life and property safe and secure, and to enforce the law of the land, are stupendous problems for city government everywhere. For this reason every city maintains a police department, and it is usually the largest and most troublesome department of city government. In large cities the police force numbers thousands of men, and even in relatively small cities the number of policemen often goes into the hundreds. People commonly think of a policeman as one who makes an arrest after an offense has been committed, but that is not the most important function of the police. The big purpose of the police department is to prevent crime and disorder, and a police department which confines itself

to dealing with crime and disorder after they occur is not fully discharging its obligation to the community.

There are three kinds of police work—ordinary patrol work, detective work, and traffic regulation. Ordinary patrol work consists of dividing the city into a large number of routes each of which is to be traversed by a policeman once or twice a day. The policeman on foot, on a motorcycle, or in an automobile moves along the route of travel or "beat" assigned to him and keeps a sharp lookout for evidences of disorder or violation of law. He reports at frequent intervals to his superiors at police headquarters, and if events require it he makes arrests and suppresses disorder. It is a very complicated and difficult task to organize patrol work properly and direct the activities of several hundred patrolmen scattered all over the city. Detective or secret service work has to do with the investigation of crimes committed by persons unknown, with the purpose of discovering the guilty persons if possible. Detectives usually operate in plain clothes, and are organized as a separate division of the police department. It is also an important duty of the detective service to familiarize itself with the underworld and to follow the movements of all known members of the criminal class. This often serves as a most effective measure in the prevention of crime. Traffic regulation is coming to be one of the most trying tasks of the police department. Twenty-five years ago this problem did not exist, but now police departments are obliged to assign an increasing proportion of the force to traffic duty. The purpose of traffic regulation is not merely to prevent accidents, but to speed up the movement of vehicles through the streets and to prevent congestion.

In addition to these three main kinds of police work a great many police departments do various kinds of special work. Of recent years a woman's bureau has been added to the police department in a great many cities. This bureau is commanded by a woman and the officers who do its work are women. It has been found that a woman's bureau can do invaluable work in connection with vice and delinquency among women, and even in some other fields can render more effective service than the divisions of the force which consist entirely of men. Many police departments also have special squads to deal with such matters as gambling, prostitution, and prohibition.

Quite as important as the police department in the protection of life and property is the fire department. The most spectacular function of the fire department is the extinguishment of conflagra-

tions and the rescue of persons trapped in burning buildings, but the quiet and unseen work which the fire department does to prevent fires is perhaps of greater value. Fire prevention work includes the inspection of theatres, office buildings, factories, tenement houses, and the like to eliminate conditions which might create a fire hazard, to see that fire escapes and extinguishing apparatus are kept in proper working condition, and to see that electrical and gas equipment are properly installed. Another phase of this work, which is not usually carried on by the fire department, is the supervision of the construction of buildings to see that they are not built in such a manner as to create danger of fire. This work is generally assigned to a division of building inspection.

The Problem of City Planning

In a small community it does not make a great deal of difference how streets and thoroughfares are laid out, how building lots are plotted, or how property is used. But in a great metropolitan community these matters are of supreme importance. In many of our older cities, such as Boston, New York, and Philadelphia, the streets are so narrow and crooked, and so poorly arranged that instead of relieving congestion, facilitating the movement of traffic, supplying adequate light and air, and helping to make business and domestic life more comfortable and convenient, they have just the opposite effect. Indeed the same mistakes have been made in nearly all of our cities, but they are not as conspicuous in the newer cities as in the older and larger cities. In a great many cities also building lots have been laid out in such a way as to prevent the proper use of land for building purposes and also to prevent the development of beautiful avenues and boulevards and the location of parks and public squares at suitable places. The use of property is also a matter of vital importance in large cities. The establishment of a public garage, a store, or a factory in a beautiful residence section will ruin it for residence purposes and destroy the value of residence property. Likewise the establishment of a factory in a fine retail district will ruin that district for retail trade and depreciate the value of property throughout the district.

To cope with the many problems which arise because of failure originally to plan the physical layout of our cities and to control their development so that they will be beautiful and at the same time lend themselves to the solution of the difficulties of urban life, is one of the greatest problems of the modern city. Much has been

done in the older cities in the straightening and widening of streets and the cutting of new streets, but this is so terribly expensive that it cannot be carried very far. Most of our cities also have city planning boards or commissions which exercise a certain control over the laying out of streets, the plotting of lots, and the location of parks in the newer parts of the city. By comparing the newer with the older sections of our cities we may often see what our cities might have been had city planning been undertaken earlier in their history. A great many cities have also undertaken what is known as "zoning". This is a device to regulate the uses of property. The city is divided into districts or zones, each of which is to be devoted to a particular type of development. In residence zones property may be used only for residential purposes, or purposes not destructive of residence property, in retail zones only for retail purposes or purposes not destructive of retail property, in industrial zones only for manufacturing purposes or other non-conflicting purposes. Thus it is designed to keep all uses of a like character segregated from other and different uses. Cities which have not gone in for zoning very often impose restrictions on the height of buildings and upon the distance from the street at which buildings may be erected. Another aspect of city planning is the creation of splendid civic centers, in which are grouped a series of monumental public buildings, and the laying out of boulevards and parks for the embellishment of the city and the enjoyment of its inhabitants.

The Problem of Public Improvements

Every city must have many miles of paved streets, sidewalks, sewers, street lights, and the like. These things occupy a large place in the minds of the people of our cities, who are ever demanding more and better pavements, sidewalks, sewers, lights, and so forth. What our grandparents would have regarded as the acme of perfection in these respects, we unhesitatingly condemn as impossibly bad. It used to be that when a street was paved, a sidewalk laid, or a sewer constructed the matter was ended for a generation or more. But that is not so today. Pavements must be renewed every ten or fifteen years, sewers must be frequently enlarged and extended, newer and better street lights must be installed every few years. So our cities are confronted with a perpetual problem of construction involving the expenditure of many millions of dollars annually. In most cities this work is done by private contractors operating under contracts with the city government. The award-

ing of these contracts not only opens the way to favoritism and graft, but obliges the city to maintain a large legal and engineering staff to prepare contracts and supervise their execution. Because of the many troubles which arise in connection with the letting and enforcement of contracts an increasing number of cities are doing their own construction work.

The Problem of Municipal Services

As a matter of convenience to the people and also as a measure for promoting and preserving public health the government of the modern city must perform a great many services that were formerly left to private initiative. It must clean the streets, remove garbage and other refuse material, supply water, and light the streets. Such activities call for the employment of large numbers of persons and the expenditure of huge sums of money. To have an adequate system of water supply a city may have to find a source of supply many miles away and construct great reservoirs, pumping stations, filtration and purification plants, and aqueducts. To dispose of garbage and refuse material the city must provide not only for its collection, but also for burning or reducing it in such a way that it will not endanger the health of the people of the city. This generally means the construction and operation of large incineration or reduction plants. The cleaning of the streets requires a large force of laborers and the use of a large amount of expensive equipment for collecting and hauling away the filth of the streets. To supply light for the streets the city must purchase current or gas from private companies and purchase or lease equipment from them, or it must go into the business of producing gas or electricity itself.

The Problem of Municipal Utilities

In the modern city such things as street railways, gas, electric, and telephone systems are necessities of life. They are so essential to the happiness, comfort, and convenience of the people that the city government must take steps to insure satisfactory service at just and reasonable rates. If these necessities are supplied by private companies, the activities of these companies must be closely regulated by the city government. Such public utility companies may not do business in the city without special permission. This grant of permission to operate a public utility in a city is known as a franchise. In the franchise the city government makes stipu-

lations as to the rights and duties of the company, the kind of service it shall render, and oftentimes names the rates it shall charge or makes provision for regulating the rates to be charged. The enforcement of franchises and the regulation of public utility companies is a highly technical and exceedingly difficult task which has been a fruitful source of controversy and embarrassment in most cities. Some cities have turned to municipal ownership and operation of public utilities as the solution of the public utility problem. The majority of cities now own and operate their own water-supply systems, and a great many own and operate their own electric light and power systems. There are a few cases where cities own and operate their own gas systems and street railways, but it has been generally supposed that municipal ownership could not succeed in these utilities. The problems and difficulties involved in municipal ownership are very different from the problems of regulation of private companies, but they are not less perplexing. The chief difficulty in municipal ownership is to prevent the debauchment of public utility services by vicious politics. When there are a large number of city jobs to be filled it is the invariable practice of politicians to give places to their close friends and political supporters regardless of their capacity for the work. If all positions on the street railways, in the gas works, the electric light plant, and so on, were to be filled on this basis, it would result in gross extravagance and inefficiency.

The Problems of Public Health

Reference has already been made to the fact that the conditions of city life are adverse to the maintenance of health. The city government, therefore, must adopt vigorous measures to protect and promote the health of the people. Epidemic diseases must be controlled by stern and arbitrary measures. In one of our large cities recently a police guard was placed about an area of some ten city blocks and no one was permitted to enter or leave that district unless he could show that he had been vaccinated. This was an extreme measure, but it illustrates tremendous power of the city government in matters of public health. This power is used in many ways. Physicians are compelled to report diseases coming to their attention to the city health department; landlords and tenants are obliged to keep their premises in a sanitary condition; builders are required to install approved sanitary appliances in buildings; milk dealers are licensed by the city and must comply with city regula-

tions in the sale of milk; grocers, butchers, bakers and restaurant keepers must comply with municipal ordinances regarding the handling of food products. The city also maintains and operates hospitals, sanatoriums, clinics, and other institutions for the relief of the sick and the combatting of disease. Many cities in recent years have introduced a public health nursing service for the benefit of the less fortunate classes. A district nurse goes from house to house taking an inventory, as it were, of the health of the inhabitants and giving advice as to measures of treatment and care of the sick.

The Problem of Recreation

Play is a necessity of life for people of all ages and conditions. In the cities healthful and wholesome play is a difficult matter. There is not a sufficient amount of open space for games and other forms of recreation; the indiscriminate mixing of persons of all ages and sexes is not conducive to proper play; and the use of the streets as play space for children is highly dangerous to life and limb. The city so far as practicable must provide parks and playgrounds. These must be equipped so that they can be used by young and old. They must be under the supervision of experienced directors and instructors. Where playgrounds are not available, certain streets must be roped off and set aside for the use of children at certain times of the day. Wholesome recreation and amusement must be fostered and harmful recreation and amusement prevented or discouraged. Tournaments, pageants, and concerts must be encouraged and assisted; theaters, dance halls, poolrooms, and the like must be subjected to supervision and regulation. A great many cities also maintain museums and zoölogical gardens in order to furnish recreation and entertainment, as well as instruction, for the people.

The Problem of Education

The problem of education is not wholly a city problem, but greater demands are made upon the school system in the cities than in the country districts. The schools in the cities have to supplement the home training of the child in a great many ways that are not deemed necessary in the rural districts. In some cities they even have to feed the children, bathe them, and have them wash their teeth at school. They must be given vocational training and guidance and frequently must be helped to obtain a job. The school systems in

the cities are also a large factor in the enforcement of child labor laws.

The Financial Problems of Cities

To carry on all of the activities which devolve upon it city government must collect and expend enormous sums of money. In facing this problem cities are in a perplexing position because they do not have the power to determine their own sources of revenue and to spend money as they see fit. In most states cities are limited either by provision in the state constitution or by act of the state legislature in respect to the kinds of taxes they may levy, the amount of money they may raise by taxation, the amount of money they may borrow, and the purposes for which they may spend money. And these limitations are very commonly imposed upon cities in such an arbitrary and unintelligent fashion that it is practically impossible for the city to carry on the financial operations that are necessary for the proper conduct of city government.

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PART VI
THE CITIZEN'S JOB

CHAPTER XXVIII

THE PEOPLE'S PART IN GOVERNMENT

One of the curious traits of human nature is the readiness with which we blot out the past and forget that it has any connection with the present. With the advent of the steamboat we quickly forgot the full-rigged sailing ship; with the coming of the railroad we promptly forgot the stage-coach; and now with the perfection of the automobile we are rapidly forgetting the horse-drawn vehicle. It is the same in the field of government. With the birth of democracy came a lapse of memory, and the majority of people now seem to be quite oblivious of the fact that for hundreds of thousands of years the great mass of people were excluded from all participation in government. It is hard for us to realize that democracy is a rank innovation, as new in the sphere of government as the radio in the field of electrical science.

The Newness of Democracy

In most countries of the world democracy is the product of developments which have taken place during the last fifty years or less, and in our own country democracy can scarcely be said to be more than 75 years old. We are often pleased to think that we began our national life on a basis of pure democracy, but such was not the case. The original basis of our government was avowedly aristocratic, and only a very small proportion of the people were permitted to have any share in government. It was not until about 1830 that the movement to grant the privilege of voting to every male citizen 21 years of age got into full swing, and it was not until some time after the Civil War that this movement finally culminated in the abolition of practically all property, tax-paying, religious, and other restrictions upon the right to vote. And it was not until 1920 that we took the final step toward complete democracy and included women in the voting population.

We perceive, then, that even in the United States, which has been a notable pioneer in the democratic movement, true and complete

democracy is a very new thing. To illustrate graphically, suppose that one should undertake to lay out two roads, one representing the number of years humanity has lived under non-democratic political institutions and the other the number of years mankind has lived under democratic government. The road representing non-democratic government would encircle the earth several times, but the road representing democratic government would not cover the distance between New York and Philadelphia. This is a tremendously significant fact, and unless we can view democracy in this perspective we shall be totally unable to understand its shortcomings and failures. The simple truth of the matter is that from having almost no part at all in government for many thousands of years the people have been suddenly thrust into the most prominent and decisive part of all, and with practically no preparation or training for their new rôle.

The people's part in democratic government is one of almost immeasurable power and responsibility, and likewise one of enormous difficulty. And it is a rôle for which the people not only have not had adequate training and experience, but which they have not yet had time to learn. To view ourselves aright, therefore, we should realize that in the sphere of government we stand just where Benjamin Franklin stood in the realm of electrical science when he sent his kite up into the thundercloud and discovered the secret of lightning. We are just upon the threshold of a new age, and perhaps after a few hundreds or thousands of years of experience with democracy our descendants will look back upon our crude and bungling efforts at democratic government with the same amused tolerance that we now have for Franklin's famous electrical experiment.

What Democracy Demands of the Citizen

Aggressive and intelligent citizenship is a *sine qua non* for the success of democratic government. Under non-democratic forms of government the people are necessarily passive and inert; the driving force of government does not come from the people. But in a democracy the people must be a dynamic power in government, or it will soon cease to be democratic in all except form. Under non-democratic government there is no reason why the people should make any special effort to understand the operations of government or to acquire any insight into the underlying nature of political processes. But in a democratic government sure and continued success is only possible when the people do understand the workings

of the governmental machine and comprehend the fundamental forces in the process of government. It is obvious, then, that democracy makes great and unusual demands upon the citizen, and demands which the people as a whole have never before been called upon to face.

Democracy gives to the great mass of people of mature years the privilege of voting. To most people at the present time this appears to be a natural and necessary incident of citizenship entailing no particular obligations or responsibilities. This is a very mistaken point of view. The people are given the right to vote because that is the only way that democratic government can be made possible, and it is the business of the people to exercise this right in such a way as to perfect and perpetuate democratic institutions and to increase the sum total of human happiness and well-being. The ignorant, indifferent, and passive voter is a far greater menace to democratic government than the stupid, lazy, or dishonest public official. Democracy can survive the shortcomings of its officials, but not the failings of the people.

Through the right to vote the people have the power to choose all of their legislative officials and to choose directly or indirectly to influence the choice of all of their executive and judicial officials. Through the right to vote the people have the power to nominate the candidates of political parties for public office or indirectly to influence the making of such nominations. Through the right to vote in many cases the people have the power to remove or recall public officials. And in places where the initiative and referendum prevail the people, through the right to vote, have the power to pass directly upon legislative measures and constitutional enactments. Finally, because of the right to vote and the way in which it may be used by the people to make or unmake the government, the people have an enormous moral influence in public affairs, an influence so strong that the mere opinion of the people, if clearly manifested, is very often absolutely decisive in shaping the course of government. Surely, then, the key to success or failure in democratic government is to be found in the way in which the people use or do not use the right to vote.

Why People Do Not Vote

"Of the people, by the people, and for the people"—we are accustomed to roll off this famous phrase without any appreciation of the sequence of ideas it involves. But it means just what it says:

that government of and by the people must necessarily precede government for the people. Yet how can this be, when half or more of the people, even in the most important and exciting elections, habitually abstain from voting? Manifestly there can be no such thing as government for all the people when fully half or more of the qualified voters fail to take advantage of the one means by which they may have a voice in government. And these people who make up the vast army of non-voters, are they merely shirkers and slackers or are there basic defects in our system of government which will account for non-voting? We are now beginning to get some light on this question. An elaborate and scientific study of non-voting in the Chicago municipal election of 1923 [1] showed that pure inertia and indifference were causes of non-voting in only 25.4% of the cases investigated, and even in these cases the investigators did not feel that the voters were wholly to blame for their attitude. It is doubtless true that some persons are utterly indifferent toward their political responsibilities and simply do not care what happens in public affairs; but it is probable that persons of this type constitute a very small minority of the whole body politic. Leaving out of account the voters who are prevented from going to the polls by reason of illness or physical disability, it seems quite evident that the principal causes of non-voting are: (1) failure to appreciate the importance of voting, (2) inability to understand the issues of the election; (3) lack of issues which appeal to the voter and excite his interest; (4) difficulty in complying with the legal requirements for voting; (5) inconvenient and unreasonable election procedure, and (6) disbelief in voting.

Failure to appreciate the importance of voting is well-nigh universal in all countries, and is not confined to the uneducated classes. Universal suffrage, for all men and women of mature age, is such a new thing that voting has not yet become an established political habit. Millions of men and women have been suddenly summoned to participation in government, men and women whose ancestors through untold generations have not voted or had any direct voice in government. Indeed, a great many of these present-day voters did not themselves acquire the right to vote until after reaching middle life. No traditions with respect to voting have, therefore, come down from the past. It has been assumed that the mere fact of giving the people the right to vote would beget a constant interest in the process of government and incidentally a true appreciation of the importance of voting. Such has not been the case, and we now

[1] See Merriam and Gosnell, *Non-Voting: Causes and Methods of Control.*

know that an intensive and unremitting campaign of education is necessary to make and keep the people aware of the importance of their own part in government.

Inability to understand the issues of a particular election is much commoner than might be supposed, and is not characteristic of the illiterate alone. We have so many elections and we are faced at each election with so many confusing and unrelated questions that the professional student of politics is oftentimes at a loss to sift out the real, material issues. We choose scores and hundreds of public officials at the same time that we try to settle important questions of policy. Personalities at times obscure and crowd out issues, and at other times a superficial issue with a strong appeal to prejudices and emotions will entirely overshadow personalities. It is no wonder that the honest and conscientious citizen often takes refuge in non-voting. There are no impartial and reliable channels of public information, there are no outstanding and trustworthy leaders, and there are no processes whereby the confusion may be eliminated. We must greatly simplify the machinery and processes of government if we want them to be intelligible to the people.

There are too many elections without any real and fundamental issues. Especially is this true in a country like the United States where many public officials are elected by popular vote and the tenure of office is relatively short. Annually, biennially, and quadrennially, whether there are any questions of public policy at stake or not, we must go to the polls and vote for incumbents to fill a large number of offices, city, county, state, and national. When it is mere contest between the Ins and the Outs, as is too often the case, and no real issues are involved, there is no reason why the general mass of voters should be deeply concerned, and as a rule they are not. The candidates and their friends and supporters in the party organization are of course much concerned and make a lot of noise; but to the average voter the whole thing is a sham battle. Why then, thinks he, should he suffer the inconveniences of registering and going to the polls?

A great many people are deterred from voting by the difficulties involved in qualifying to vote. It sometimes seems that our legislators have exhausted their ingenuity to make it hard for people to vote. In order to prevent abuses we have surrounded our election processes with such a vast amount of red tape that it is really remarkable that people ever take the trouble to vote. In order to qualify for voting the citizen must register at a stated place and time weeks or months in advance of the election. That is to say,

he must anticipate the election long before it has developed to a stage that would excite much interest, he must keep track of the registration dates, and then he must take time from his business or his recreations to hunt up the place of registration and get his name inscribed on the books. And if, since the last election, he has changed his place of residence to another voting precinct, county, or state his difficulty is much increased. Now of course it may be said that every good citizen ought to be willing to suffer these inconveniences in order to perform his civic duty; but we must remember that the sense of civic responsibility is not as yet very highly developed, and that we are expecting the average person to take more trouble in order to vote than he would take in order to procure tickets to a theatrical performance or a baseball game which might be of tremendous interest to him. It is no use to preach civic duty to people who are accustomed to the convenience and dispatch of modern business methods. It is not necessary to subject the voter to serious inconveniences in order to protect the purity of elections; ways can be found to safeguard the election process with a minimum of inconvenience to the voter, and they must be found if we want all the people to get into the habit of voting regularly.

Closely allied to the foregoing cause of non-voting is the fact that actually getting to the polls on election day is a difficult matter for many people. A certain proportion of the voters are always away from their home communities on election day and, unless there is some provision for absent voting, are necessarily excluded from voting. And even when the law provides for absent voting, the steps necessary to take advantage of the law are often so difficult as to discourage its use. Elections in this country are always held on business days, and it is not a general practice for employers to allow time for their employees to get to the polls. Furthermore, the polling hours are very often such as to make it exceedingly difficult for workers to find time to vote before or after their regular working hours; and this difficulty is often accentuated by the inaccessibility of the polling places. It would seem sometimes that the polling arrangements are suited to the convenience of the election officials rather than to the convenience of the voting public. The countries of continental Europe have tried to overcome some of these difficulties by holding elections on Sunday.

A great many people are deterred from voting by some sort of disbelief in voting. Election statistics show conclusively that non-voting is far more prevalent among women than among men. To a

certain extent this is attributable to the fact that woman suffrage is so new that women have not as yet become accustomed to their civic obligations; but among certain classes of women it is due to a disbelief in woman suffrage. Many women were opposed to woman suffrage, and because of this have refrained from exercising their suffrage rights. A great many women who remained more or less indifferent on the woman suffrage issue, see nothing to be gained by woman suffrage and therefore think it makes no difference whether they vote or not. And a great many women, especially among the foreign elements of our population, are deterred from voting because of the opposition of their husbands.

Disbelief in voting, however, is prevalent among men as well as women. The burden which we place upon the voter in this country often results in a feeling that the whole business is hopeless and useless. Our political system is as inexorable as the calendar. Every year, every two years, or every four years, whether it is necessary or not and whether the voter wants it or not, we must go through with a succession of elections to choose incumbents for innumerable public offices about which the voter knows little and cares less. The voter, to use the colloquial expression, is "fed up" with elections, and loses both his interest and his faculty of discrimination. Voting becomes a meaningless, mechanical operation of marking crosses in spaces. The writer recently voted in an election in which there were 52 offices to be filled and 279 candidates standing for those offices. Although his list of acquaintances in political circles is probably somewhat greater than that of the average person, he had personal knowledge of only 16 of the 279 candidates; and but for the fact that he is professionally interested in public affairs, he would have understood very little about most of the 52 offices which were to be filled.

The voter's sense of the futility of elections is also greatly heightened by the many catches and pitfalls in our check-and-balance system of government. The voter marks his ballot in the belief that if the persons for whom he votes are elected certain policies will be carried out. But when these officials get into office, they are blocked and checked by minorities intrenched in other departments of government. And even when that does not happen, the basis of representation is often so inequitable as to prevent the realization of the desires of the majority of voters. Under such circumstances it is not strange that many voters become discouraged and cynical, and profess to believe that it is no use to vote because the government will be dominated by bosses and politicians anyhow.

Why the People Vote Blindly

It is the fashion in some quarters to decry the stupidity and blindness of the people. Indeed, the data produced by the new science of intelligence testing have led some authorities to doubt whether the great majority of people have sufficient intellectual acumen to vote intelligently and sanely. This pessimistic view assumes, of course, that more than average intelligence is necessary for clear-headed voting, but this assumption is without any foundation in fact. With the right sort of governmental organization and the right sort of election procedure, the mediocre or sub-mediocre intellect is nearly as capable of reaching sound conclusions on non-technical questions as the intellect with a high intelligence rating. To reach sound decisions on political questions does not require an extraordinary capacity for abstract thought—which is what the intelligence tests usually measure—but a practical common-sense which the ordinary mind possesses in just as great abundance as the exceptional mind. Yet it must be admitted that the people do often vote blindly and make absurd and preposterous mistakes. These, however, may be explained on other grounds than the inherent incapacity of the people to govern themselves.

In the first place, all people are swayed by their prejudices and emotions as much as by their intelligence. This is just as true of the exceptional intellect as of the ordinary intellect; just as true of the educated as of the ignorant and unlearned. Brilliant and educated persons have quite as many prejudices and emotions as stupid and uneducated persons, but they are of a different character. Any one searching for examples of blind and unintelligent voting occasioned by emotional complexes need not canvass the moron population; college faculties will furnish just as many horrible illustrations. We have not yet learned to mark our ballots with the same dispassionate detachment that we use in keeping accounts or counting money, and until we do there will be an endless amount of blind and stupid voting. Many generations of democratic experience will probably be necessary before we learn to keep our politics and our passions in separate psychological compartments, for this is a lesson that we can only learn through bitter experience.

Another reason for blind voting is that we have no means of obtaining accurate and impartial information on public affairs. For most of our information on public questions we are dependent upon newspapers and periodicals; and there is no such publication which makes a practice of telling the whole truth and nothing but the

truth without any toning up or toning down. For commercial enterprises, such as the modern newspaper or magazine, telling the whole unvarnished truth would probably be impossible even if they were without political bias, which they are not. The majority of our newspapers and magazines are party organs; or if not that, they represent a fixed point of view in public affairs, radical or conservative. In view of this fact they cannot present complete and uncolored facts to their readers, and they probably would not be believed if they should attempt to do so. It would certainly be a great boon to the voting public if there could be in each community a public journal so organized and controlled that it could not be dominated by any party, group, or interest, which would publish complete facts without fear or favor and whose columns would be open to all on equal terms for the presentation of information, opinions, and arguments.

Still another cause of blind voting is the fact, too little understood, that the intricacies and complexities of our system of government often betray the people quite unwittingly into stupid and foolish actions. We have already pointed out that the long ballot obliges the voter to select incumbents for a score or more of offices from a field of a hundred or more candidates at almost every election. The wisest of sages could not vote such a ballot intelligently, for it is not intelligence so much as information that is needed by the voter. It is also a fact that the structure of our government is so complicated that it is practically impossible for the voter to understand what will be the effect of his vote. We not infrequently have the spectacle of the people electing at the same time a President of one party and a Congress of the opposite party, a governor of one party and a legislature of the opposing party, a mayor of one party and a council of another party. In so doing the voters have no intention of creating a governmental deadlock, although that is almost invariably what happens. The great majority of voters simply have no comprehension of the ease with which they may under our complicated system of government inadvertently nullify their own sincerest wishes and desires. When the voters put a man into the office of President, governor, or mayor, they have presumably singled him out to be a responsible leader and they expect him to get things done. Why, then, do they at the same time hang a millstone around his neck in the shape of an adverse legislative majority? The fault is not with the voter, but with the system of governmental organization which compels him to carry so many different accounts in his political business that it is almost impossible for him to see how one affects another.

Every person who has given any thought to political matters knows also that the methods of nominating and electing public officials do not in most countries give the voters a fair chance to express themselves as they would really prefer. Indeed, it sometimes seems that political parties exist primarily to deceive and mislead the people, and that the prevailing system of nominations and elections is specially designed to facilitate that end. That, however, is a subject which belongs to the next chapter.

Mass Government vs. Group Government

For the great mass of people direct participation in government begins and ends with voting. But the mere fact that the people vote does not mean that the people rule. There is all the difference in the world between simply casting a ballot and using the right to vote as a potent influence in public affairs. Voting *en masse* may not and often does not mean anything more than that vast numbers of people have mechanically gone through the motions of marking and casting their ballots. They may have voted for nothing that they understood, nothing that represented their real political sentiments and aspirations, nothing that they considered vital or that came directly home to them, and nothing that would lead to the real effectuation of their will.

The plain fact of the matter is that the people as a huge, unorganized mass have no will. They are inert and passive, incapable of acting intelligently and effectively through the ballot or any other instrumentality of popular action. The only way the people can function is through group organization and leadership. Human life is fundamentally group life, and nearly all of our vital concerns and aspirations are indentified with group concerns and group aspirations. Political consciousness does not come to us as individuals, but as groups. A given number of individuals, say a thousand or a million, has no more political reality than the same number of inanimate objects; but a given number of individuals who constitute a self-conscious and cohesive group may be a vital element in the political life of a nation. This is because we are psychologically so constituted that with reference to social matters we can only think and act through group or herd processes.

Now it is an unfortunate fact that the political machinery and the political processes of most democratic countries have not kept pace with the developments of the social and economic world, and for that reason they very materially interfere with the full and free

play of natural social and economic groups in the process of government. Instead of stimulating group leadership and group action, of supplying channels for group activity, and of regularizing, regulating, and accommodating themselves to group processes, our modern systems of government to a large extent impede and restrict the functioning of natural social and economic groups; and in so doing they reduce popular participation in government to sterile and perfunctory formality.

To vitalize the people's part in government, to render it fruitful and effective, we must thoroughly revise and reconstruct our systems of representation and election, our schemes of party organization and procedure, our machinery of legislation and administration, and our general processes of civic activity so as to promote and take advantage of natural group organization and group activity. This in a broad sense is democracy's greatest problem.

CHAPTER XXIX

ELECTIONS AND ELECTORAL PROBLEMS

An election is simply a device or proceeding to enable the qualified voters to express their preferences as to the persons who shall occupy public office and as to the measures which shall be adopted by the government. It is impossible to carry on any government except an absolute despotism without elections. Indeed, it is impossible to carry on any sort of human activity which is dependent upon the decisions of large numbers of people without resorting to some scheme of election. Elections are used in the management of business corporations, churches, fraternal orders, labor unions, school and college societies, and, in fact, in almost every kind of human organization. Methods of election vary all the way from the simple and informal process of taking an oral vote to the most complex and intricate scheme of voting by ballot. In the transaction of governmental business elections involving some more or less elaborate system of voting by ballot are now in general use.

Different Kinds of Elections in the United States

Government in the United States is characterized by an almost uninterrupted succession of elections. We have town elections, village elections, school district elections, city elections, county elections, state elections, and national elections. These occur regularly at stated intervals of one, two, three, or four years, and are so arranged chronologically that a year seldom passes without the voter being called upon to participate in one or more elections. And then in addition to these regular elections we have many special elections for voting on bond issues or other questions of comparable character.

The purposes for which elections are used in this country are just as numerous and varied as the different governmental units in which elections are held. Elections are used to choose presidential electors, to choose senators and representatives in Congress, to select governors, state administrative officials, members of state legislatures, state and local judges, county officials, mayors, members of city

councils, members of school boards, and town and village officials of all kinds. Elections are used to nominate party candidates and to choose delegates to party conventions. Elections are used to act upon measures initiated by popular petition and upon legislative measures referred to the people. Elections are used to adopt city charters and state constitutions, and to consider amendments to both city charters and state constitutions. Elections are used to authorize the issuance of bonds, the extension of debt limits, the construction of public works, and so on. Elections are used to create towns and counties and to determine the location of county seats and state capitals. Elections are used in many states and their political subdivisions to recall elected or appointed officials. There is, indeed, scarcely any question or public issue which may not be made the subject of an election.

The Law Governing Elections

The law governing elections in the United States is in large part state law, the handiwork of state legislatures. With reference to national elections Congress has enacted certain general laws regulating the time and manner of conducting elections, but these laws do not remove from the states the fundamental control of national elections nor do they affect the procedure of elections in detail. Cities and towns in a great many states have been given considerable freedom in regulating their own local elections, but this local independence is very often conditioned upon their compliance with the general provisions of the state election laws.

One who desires to be informed upon election questions in the state in which he lives should apply to the secretary of state of his state for a copy of the election laws of his state. He will thereupon receive a bulky document of a hundred pages or more. It will not be easy reading, and he may put it aside with the conviction that it is unnecessarily obscure and complex. Indeed, it may be so intricate and technical that he can get little or nothing out of it; but he should nevertheless remember that it is the law which, as applied by the courts and the election officials, regulates and controls his participation in government. If he and his fellow citizens want it made clear and simple, it can be made so; but that will never be done until the people demand it. There are certain interests, notably the professional politicians, which profit by the intricacy and obscurity of the election laws, and so long as the people remain indifferent to the character of their election laws, they will remain

in their present chaotic and unintelligible condition. The election law deals with such vital subjects as the registration of voters, the form and preparation of ballots, the location of the polling places, the use and control of ballot boxes, the selection of election officials, the counting of ballots, and the reporting of election returns. For some reason voters do not seem to realize that the entire outcome of the election may depend upon these matters.

The Administration of Election Laws

It is remarkable how many people seem to have the idea that in some way the election laws automatically enforce themselves. They do not seem to grasp the fact that it requires a great deal of special administrative machinery and administrative activity to provide for the registration of voters, the preparation and printing of ballots, the location and equipment of voting places, the selection and supervision of election clerks and judges, the counting of votes, and the consolidation of election returns. Nor do the people generally seem to be conscious of the fact that the officials who are charged with the administration of the election laws have power to make many decisions and perform many acts which vitally affect the purity, honesty, and effectiveness of election procedure.

In all of the states the law delegates to certain designated officials, as the secretary of state, the county clerk, the sheriff, or a specially constituted board of elections, the authority and responsibility for administering election laws and conducting elections. These officials are either elected by popular vote or appointed by popularly elected officials, and in either case are almost without exception active party workers or professional politicians. In many of the states, in fact, the law specifically provides that the control of election machinery shall be divided between the two major parties, and this of course absolutely insures the administration of election laws in a manner congenial to the interests of professional politicians in both parties. So when it comes to a question of deciding upon the sufficiency of a petition to place a measure or the name of a candidate upon the ballot, of determining the right of independent candidates to have their names upon the official ballot, of deciding whether certain ballots are properly marked, of issuing certificates of election, or any other doubtful point in the application of the election law—and election law abounds with doubtful points—the power of decision, in the first instance at least, is almost invariably placed in the hands of partizans and professional politicians.

It would not do to say that elections in this country are as a rule dishonestly or corruptly administered, but it can be asserted without any reservation that they are not fairly and impartially administered, and that personal and partizan expediency too often determines the decisions of election officials. There is no phase of our government where reform is more urgently needed than in the administration of election laws, and good citizens who are concerned about the improvement of democratic institutions would do well to concentrate their attention on this subject.

The Essential Steps in an Election

The first step in an election, so far as the voter is concerned, is registration. It is now an almost universal requirement that before a person may participate in an election he must appear before a registering board or official some time prior to the election and prove that he possesses the proper qualifications for voting. His name is then entered upon an official record, together with certain facts as to his age, residence, nativity, citizenship, previous voting place, etc., and in some states he is required to sign his name at a designated place on the record. The chief object of this requirement of registration prior to the election is to reduce the likelihood of fraud and corruption in the election. The list of registered voters is used as a check upon the voters who present themselves at the polls on election day, and persons not duly registered are not permitted to vote. Provision is usually made, however, for the late registration of voters who for good and sufficient reasons are unable to register during the official registration period, but this calls for a special procedure with which many voters find it difficult to comply. When the voter is obliged to register anew for each election, as is the rule in many states, the requirement of registration operates as a serious deterrent upon voting and entails a great deal of unnecessary expense. To avoid these consequences, a number of states have introduced a system of permanent registration which provides that after once registering the voter may vote in all subsequent elections, unless since his initial registration he has moved, failed to vote, or changed his party, in which event he must re-register before he can vote. The officials who conduct the registration of voters, under either system, are in a position to take advantage of credulous, uninformed, and ignorant voters, and it is an unfortunate fact that in some parts of the country the registration machinery has been so

abused as to result in the virtual disfranchisement of large numbers of voters.

The next step in election procedure for the voter is for him to appear at the proper polling place on election day. The polling place may be located in a school house or other public building, in a vacant store building, or in a specially devised portable building on a vacant lot or street corner. The voter enters the polling place, gives his name and address to one of the election officials, and, after his name has been checked against the registration list, is given a blank ballot.[1] With this in hand he retires to one of the compartments or booths at the end of the room and proceeds to mark his ballot. When he has finished marking his ballot, he folds it, emerges from the booth, and hands the ballot to one of the officials, who, after tearing off the numbered stub at one end of the ballot, deposits the ballot in the ballot box or instructs the voter to do so. The number on the detached stub is then checked against the voting register as proof that the voter has cast his ballot.

The voter's part in the election is now over, but of course a great deal remains to be done. At the close of the election, the officials in the polling place open the ballot boxes and proceed to count the ballots and tally up the results. When they have completed their count, they make up an official report of the result, one copy of which is posted outside the polling place and the other, called a "return," is forwarded to the central election authorities of the county. Having done this and having also forwarded to the central election officials the counted ballots done up and sealed in official packages, the work of the officials in the polling place is ended. The county election authorities now forward returns for the entire county to the state election authorities (commonly the secretary of state), and in due time the official results for the entire state are compiled and announced. Following this comes the issuance of certificates of election to the winning candidates, by the secretary of state for state and national officials and by the county election officials for local officials. Under the law in most states a defeated candidate may ask for a recount, but this usually means rechecking the returns from the polling places; it is not ordinarily possible to go behind the face of the returns and recount the ballots without an order from a court of competent jurisdiction.

[1] Voting machines are used in some places, but they have not met with general favor.

The Limitations of an Election as a Political Process

When the voter stands in the polling booth marking his ballot, he is not expressing his full and free opinion in governmental matters. Far from it. He is merely choosing from a number of alternatives presented to him the ones which seem to him to be preferable. He may be far from satisfied with any of the alternatives thus offered, and so in reality his vote may be nothing more than a choice of what seem to him to be the lesser of several evils. It is obvious, therefore, that the ways in which these several alternatives come to be presented to the voter are quite as significant as the marking of the ballot itself. Of what value is an election if the voter has no control over the alternatives from which he must make his choice? The only value that it can possibly have is that it enables the electorate to reject the things of which it most strongly disapproves; it certainly does not enable the electorate to get what it wants. Not until we devise and adopt ways and means whereby the voter in the polling booth may indicate his absolute and positive preferences in governmental matters can we say that the results of an election represent anything more than a rough approximation of popular will.

Another weakness in our election system is that, despite the fact that the voter may be offered ample opportunity to express his real preferences, the form of the ballot is often such as to make it extremely difficult for the voter to indicate the choice he wants to make. The form of the ballot may be such as to make it easy to vote a straight party ticket and hard to vote independently; the requirements for marking the ballot may be such as to confuse the voter and betray him into making errors which will invalidate his ballot; or the ballot may contain such a formidable array of names and measures that even the most conscientious and intelligent voter cannot thread his way through the labyrinth and be sure that he has done what he really wanted to do. An election which overburdens and befuddles the voter is in reality no election at all; it is merely a guessing contest.

Added to these shortcomings of our election system is the fact that the process of counting the votes is carried on in such a way that the voter can have no assurance of the accuracy and honesty of the results. It is common knowledge that the counting of ballots and the making of the returns is not always honestly or accurately done; but if the average citizen had any conception of the frequency with which this occurs and the extent to which it changes election results,

there would be a tremendous outburst of popular indignation all over the country. There are many sections of this country where persons who are politically wise and according to the colloquial phrase are "in the know" will tell one confidentially that there is almost never an honestly conducted election.

Still another handicap from which the voter often suffers is that the grouping of voters into districts or constituencies for the election of representatives in his city council, his state legislature, or in Congress may be such as to render his vote futile and worthless. Millions of voters in this country are deprived of representation and of most of their political effectiveness by gerrymandered legislative election districts. And even when the constituences are not gerrymandered, many voters are arbitrarily grouped in constituencies which do not offer them an opportunity to vote for the persons they most desire as representatives, because one must vote the ticket in his own district regardless of the fact that he may not want to help elect any of the candidates in his own district and may very much want to help elect a candidate who is running in another district.

Thus it is seen that there are many circumstances which limit and condition the effectiveness of elections as a means of expressing popular will and exerting popular control in government. So long as such circumstances exist it would be hazardous indeed to attempt to formulate definite conclusions as to the capacity of the people for self-government.

Problems of Electoral Reform

The improvement and perfection of our system of elections should be of deep concern to all citizens who are interested in the success of democratic government. In the limited space available here it is impossible to deal extensively with the question of electoral reform, and, in truth, our electoral system needs improvement at so many different points that it is difficult to say which of our electoral problems are the more important and fundamental ones. It is recognized, however, that among the most urgent electoral problems of the present day are those having to do with the honesty and purity of elections, with the control of the nominating process, with the form of the ballot, with the overburdening of the ballot, and with the basis of representation.

The Protection of the Purity of Elections

The statement is often made that corruption and fraud in elections have been more or less common in this country ever since colonial times. Be that as it may, we know that the enormous growth of our population during the past century (and particularly the concentration of population in cities where there is a large alien element), together with the advent of practically universal suffrage, has greatly increased the number of election abuses and enormously enhanced the difficulty of preserving the purity of elections. During the past half-century we have witnessed a perfect avalanche of legislation designed to safeguard the purity of our election processes. There have been laws requiring the registration of votes in advance of the election, forbidding bribery of voters and election officials, penalizing tampering with ballots or ballot boxes, prohibiting the solicitation of votes within a certain distance of the polls, providing severe punishment for personation and repeating, protecting the secrecy of the ballot, limiting campaign contributions, regulating expenditures for campaign purposes, requiring publicity of expenditures for campaign purposes, and so on. These laws have for the most part been well intended, and it is not denied that they have had beneficial results in most cases; but unfortunately they are rather easy to evade, and because of the fact that our election laws are as a rule administered and enforced by professional politicians, they are not infrequently violated with impunity.

In all of the states there is great need of strengthening the corrupt practice laws, but even more urgent than that is the necessity of taking the administration of election laws out of the hands of those who have a selfish interest in the management of election machinery. There should be in each state a central department of elections with a complete staff of deputies and assistants in every county or town. The personnel of this department from the top down should be wholly removed from political influence or control. All members of the department should be chosen by civil service examinations and should hold their positions during good behavior. To insure impartiality and non-partizanship all officials and employees of the department of elections should be forbidden to be members of any party or to hold any official position in the organization of any party. It might even be desirable to deprive them of the right to vote during the time of their connection with the department of elections. They should likewise be forbidden to hold any political

office for a period of years before becoming and after ceasing to be members of the department of elections. There would never be much question about the purity of elections if the administration of election laws were to be committed to a department constituted in this fashion.

The Nominating Process

For the voter to have much chance of voting as he wishes in the election he must have extensive control over the nominating process. There are of course only two sorts of nominations—party nominations and independent nominations. Party nominations are made by party conventions or by direct primary elections. Independent nominations are usually made by petition.

Party conventions give the average member of the rank and file little opportunity to influence the decisions of the party in nominating candidates for public office. The delegates to party conventions are selected directly or indirectly by the rank and file of the party, and in theory are responsible to the rank and file. Unfortunately there is absolutely no way of enforcing that responsiblity, and long years of experience have conclusively demonstrated that the party convention is much better adapted to the machinations of professional politicians and party bosses than it is to the realization of the wishes of the rank and file of the party. It is possible of course by close legal regulation of party conventions to eliminate many of the gross abuses which have characterized them in the past; but the convention system has fallen so low in the esteem of the average voter that it is doubtful if it can ever be restored to favor with the rank and file. That explains why the direct primary system has so extensively superseded the convention system.

Under the direct primary system every voter is given an opportunity to have a voice in the nomination of his party's candidates. Persons hoping to obtain the nomination of their party for a particular office may have their names placed on the official primary ballot by filing a petition signed by a stipulated number of voters. Then on the day of the primary election the voters of the party are given an opportunity to select a candidate for each office from among the names of those whose appear on the official primary election ballot. There are two types of direct primary, known as the closed primary and the open primary. Under the first type the voter is obliged to register in advance as a member of the party and none but registered members of the party may vote the party ballot on

primary election day; under the second type no test of party allegiance is required and any qualified voter desiring to vote in the primaries of a party is permitted to do so. The open primary has been severely condemned on the ground that it enables persons who are not *bona fide* members of the party and are probably members of the opposing party to enter the primaries of a given party and destroy its unity and weaken its slate of candidates. This objection is well taken, and is usually given as a reason why the closed primary should be preferred to the open primary. As a matter of fact, however, there is almost as much disregard of strict party alignments under the closed as under the open primary. With millions of people in this country party allegiance rests very lightly, and they have no compunction about registering as Democrats for one primary election and as Republicans for the next, or *vice versa.* And they have even less compunction when it comes to voting the ticket of one party in the one election and registering as members of the opposite party in the ensuing primary election. Such acts may technically amount to perjury, and whether they do or not, they are almost invariably contrary to law and punishable by fine or imprisonment. But what of it? To enforce the law would require the prosecution of half or more of the electorate in most of the states, and that is out of the question.

Experience with the direct primary system has disclosed a number of weaknesses. One of the most conspicuous shortcomings of the direct primary is that it tends to scatter the party vote among so many different candidates that the nominations are frequently made by small minorities and do not therefore fairly represent the party. Another weakness of the primary system is that it often destroys party unity and encourages factionalism. A third effect of the primary system, according to many of its critics, is that there is no way to prevent party bosses and machine politicians from concentrating their strength upon their own handpicked candidates and effecting their nomination by dividing the non-controlled vote among several anti-machine candidates. Still another objection that is often urged against the direct primary is that it is unnecessarily expensive both to the taxpayers and to the candidates. But perhaps the most fatal weakness of the direct primary system is that the number of offices for which nominations must be made and the number of candidates for each nomination are so great that it is next to impossible for the voter to make his selections with intelligence and discrimination. It may be that none of the foregoing weaknesses is insuperable; but however that may be, it seems evident that the direct primary has

come to stay. It places in the hands of the voters a weapon which they will never knowingly relinquish. The problem of the future, therefore, is to improve and perfect the direct primary so as to render it a more adequate and effective instrument in the hands of the electorate. A great many changes in the primary system are now being advocated. Perhaps the most prominent of these is the so-called pre-primary convention. The gist of this proposal is that a party convention shall be held prior to the primary election for the purpose of adopting a platform and putting up a slate of candidates, and that this slate of candidates shall go before the voters at the primary election along with the candidates whose names have been proposed by petition, thus giving the voters a chance to endorse the convention slate or make independent nominations of their own.

For What Should Elections Be Used?

Not a little of the trouble arising in connection with our election processes is attributable to the fact that we persist in trying to use elections for purposes for which they are not suited. It is mistakenly assumed that the voters ought to elect all or nearly all of their public officials. The fact is, however, that the greater the number of officials to be elected by popular vote the more difficult it is for the voter to exercise proper care and intelligence in voting. Furthermore, the great majority of public positions are of prosaic, routine, and technical character, and for that reason do not attract the attention and interest of the voter. The voter is not competent to choose incumbents for such positions because he can never have an adequate understanding of the nature and requirements of the job. Probably every one would admit the absurdity of electing research chemists by popular vote, but we annually call upon the voters to fill many other positions of equally technical character without seeming to be aware of the absurdity at all.

The people should elect only those officials who have power to determine public policies and whose positions are sufficiently important and conspicuous to command public interest and attention. If this rule were followed, we should resort to popular election only to choose members of legislative bodies, chief executives, and possibly judges. The result would be an enormous simplification of the task of the voter and a corresponding increase in intelligent and effective voting.

Not only should the voters be relieved of the impossible task of choosing innumerable administrative officials, but they should not

at any one time be required to pass judgment upon a large number of legislative proposals, either initiated or referred. When confronted with a few measures of genuine significance upon which they can concentrate their attention, the voters are quite capable of arriving at intelligent conclusions. But when they are asked to pass upon a miscellaneous array of measures, some of which are important and others quite trivial, some of which are intelligible and others wholly obscure, the voters can do nothing better than guess or manifest their doubt and hesitation by negative votes.

The Form of the Ballot

The arrangement of the ballot has much to do with the effectiveness of voting. There are two principal types of ballot in use throughout the United States, one known as the party-column ballot and the other as the office-block ballot. The party column ballot is divided into vertical columns, and the names of the candidates of each party are printed in a separate column in order of the rank of the office. At the head of the column there is usually a circle or square in which the voter may mark a cross and thus vote for all the candidates in the column. This form of ballot discourages independent voting because it obliges the voter who wants to depart from the regular party ticket to scan the other columns of the ballot in order to find the names of other candidates than those appearing in the column of the party of which he is a member. It also has a tendency to confuse the voter who tries to "scratch" his ticket and to betray him into blunders which may lead him to spoil his ballot.

The office-block type of ballot provides for the grouping of the names of all the candidates for each office in a block apart from other candidates. Thus the names of all candidates for governor are placed together in one block, the name of the candidates for Congress in another block, the names of the candidates for sheriff in another, and so on. Within each block of names the names appear sometimes with a party designation and sometimes without. The names are usually arranged alphabetically, but are rotated in the printing of the ballots so that the different positions in the lists are equally distributed among all the candidates. This type of ballot is said to facilitate independent voting and to make it easier for the voter to express his exact personal preference among the different candidates.

Various combinations of these two principal ballot forms have been worked out in different states, and some states use the party

column ballot in general elections and the office-block in local elections.

Representation and Elections

When representation in a legislative body is unfairly apportioned, as it is in most of our states and cities and to a certain extent even in the national government; when by means of the gerrymander voters of like beliefs and principles are scattered among different wards or election districts so that they cannot elect the number of representatives to which they are entitled; or when under the system of election at large a mere plurality is sufficient to elect—when conditions such as these exist, it is obvious that an election can be little more than a mockery and a hollow sham. Elections under such conditions cannot be expected to express the true will of the voters, and what they actually express is often the very opposite of the will of the voters.

We are therefore faced with the fundamental issue of thoroughly revising our system of representation and substantially modifying our voting procedure. The reform which is most widely advocated and advertised as a means of providing fair and equitable representation and a scheme of voting which will give accurate expression to the will of the electorate is called proportional representation. There are many systems of proportional representation, but we shall confine our attention to the so-called Hare system, which is the only one that has been seriously considered in this country. Under this system the single-member district for legislative representation is abandoned. Representatives are elected at large or by large districts in which several are to be chosen. The system of election by majority or plurality vote is also abandoned. The theory of proportional representation is that to be elected a candidate should not be required to receive a majority or a plurality but a number of votes equal to a fair ratio between the number of places to be filled and the total number of votes cast in the election. Thus if there are three places to be filled a candidate ought not to be required to receive more than a third of the votes casts in order to be elected. The aim, under the Hare system, would be to find a number between a fourth and a third of the total number of votes cast which would be the minimum number of votes necessary to elect each of three persons when three places are to be filled. This would be accomplished by dividing the total number of votes cast by four and taking the whole number next above the resulting quotient as the quota of

votes required to elect a candidate. This number, being just above a fourth would be just too large in case of four places to be filled, and would therefore be the least number by which a candidate could be elected in case of three places to be filled. The same method of computation would be used to find the quota in case of a larger or smaller number of places to be filled.

The method of voting is also very different under proportional representation. Instead of marking his ballot with the customary cross, the voter uses numerals and may vote for as many candidates as he desires. He puts the figure 1 opposite the name of the candidates he prefers as first choice, the figure 2 opposite the name of the candidate he desires as second choice, and so on as far as he wishes to indicate preferences. The voter's ballot is counted first for his first choice; but if his first choice cannot be elected or does not need that vote to be elected, it will be transferred to the candidate indicated as second choice, and in case it cannot be used to help elect him it will be transferred to the third choice, and so on until it is actually used to help elect some one for whom the voter expressed a preference. The method of transfer is complex and will not be described here. Its object is to give the fullest possible opportunity for each voter to express himself politically and to give assurance that his vote will not be wasted but will actually be counted for some one for whom he voted. The proponents of proportional representation believe that when this system is used every person elected will be the choice of a group of voters who really wanted to put him into office, and a group large enough to be fairly entitled to representation. It is believed, moreover, that the great majority of voters will see their first choice elected, that practically all of the voters will see some person of their choice elected, and that all of the voters will be faithfully represented.

Proportional representation has been adopted for municipal elections in Cleveland and Cincinnati, and in four or five smaller American cities. It has long been used in various parts of Europe, and to a certain extent in Canada and Australasia. In the United States it is still in the experimental stage; but it is an experiment that is most decidedly worthy of careful observation.

CHAPTER XXX

THE POLITICAL PARTY

One of the last acts of George Washington upon retiring from the presidency was to warn his fellow countrymen against the dangers and evils of political parties. In Washington's opinion parties had no place in a free government, and his opinion was widely shared by other eminent persons of the same period. But before his death Washington saw our government entirely succumb to party control and witnessed the beginning of one of the most violent party struggles in our entire history. From that time forward the government of this country, national, state, and local, has been pretty largely an affair of political parties. Indeed, some authorities are of the opinion that our check-and-balance system of government would have proved impracticable and unworkable had it not been for the coördinating effect of party government.

At the present time a great many people seem to have returned to the Washingtonian view of political parties. Parties are regarded as deplorable but inescapable evils; partizanship is deprecated and condemned; active party work is considered unrespectable and even disgraceful. It behooves us, therefore, to give careful thought to the political party and its place in our government.

What Is a Political Party?

A political party is an organization of people who have similar views or purposes, or both, with regard to government, and who are banded together in order to get control of the machinery of government and thus carry out their views and achieve their objects. Such an organization may be held together by exalted ideals and noble principles, or by the basest, meanest, and most selfish motives imaginable. It is just as much a political party in the latter case as in the former. In actual practice political parties are governed by a curious and paradoxical mixture of noble ideals and base motives; and it is sometimes exceedingly difficult to disentangle the two.

What Political Parties Do

The first and most fundamental activity of a political party is to name candidates for public office and endeavor to get them elected, and thus to get possession of the controlling organs of the government. Having accomplished this, the party seeks to control the filling of positions by appointment so as to have its own active workers and supporters in all branches of government as far as possible.

After a party gets into power, it strives to enact laws which will carry out the principles and objects for which it stands, and to administer the laws in such a way that its principles and objects will be realized in practice.

The foregoing are the basic activities of all political parties, but in order to do these things many other activities are necessary. An elaborate organization of committees must be built up and maintained in all sections of the country; leaders must be selected; workers must be supervised and directed; literature must be published; speakers must be employed and directed; huge sums of money must be raised and expended.

How Parties Are Organized and Managed

A political party is a purely voluntary and private organization. Until very recently there was never any thought of regulating the organization and procedure of political parties by law, and such legal regulations as have been imposed upon parties of late years do not go very far. Not only is the political party a private and voluntary affair; it is the only organization of that character which is absolutely free and open to every one. Except in the case of the Socialist Party, there is no formality attached to party membership. No dues are required, and any person may become a member of own initiative and may discontinue his membership at will.

Parties are governed and their affairs are managed by a series of committees extending all over the country. The most important of these committees is the national committee. This committee consists of two[1] members from each state. The members of the national committee are chosen in the national convention of the party,

[1] The Democratic Party in 1920 and the Republican Party in 1924 provided for the appointment of two members for each state, one to be a man and the other a woman. Prior to these changes there was only one member for each state.

the body of delegates from each state designating the committeeman for that state. A number of the states now have laws requiring the state delegation to present to the convention the names of persons elected by the party voters in that state at a direct primary election. The national committee is so large and unwieldly that it does not often meet. It chooses a chairman, a secretary, a treasurer, and other officers, and also an executive committee. In presidential years the presidential nominee of the party is privileged to name the chairman of the national committee, and the chairman so named may hold over until the succeeding presidential campaign.

In each state there is a state central committee which is a close counterpart of the national committee. It consists usually of one or more members from each county, and these are chosen either by party conventions or by the direct primary. The state chairman occupies much the same position in state politics as the national chairman in national politics. In each county there is a county committee which consists of members selected to represent the various subdivisions of the county; and there are also town or township committees in the rural parts of the county and ward or precinct committees in the cities. These committees are all organized after the pattern of the state and national committees, and very often their membership overlaps with that of the higher committees.

The real governing power of the party, while it is nominally lodged with these committees, is chiefly exercised through their officers and through the small executive sub-committees. The national chairman, the various state chairmen, and the numerous local chairmen, with their various official associates on the party committees and sub-committees, make up the ruling class in party affairs, and for all practical purposes they rule as an irresponsible oligarchy.

The question which most concerns the voter who wants to be a factor in party affairs, is "How does one get to be a member of one of these governing committees?" That is a difficult question to answer, because there is no formula that will work in all cases. As a rule one must begin as an active worker at more or less menial tasks, such as circulating petitions, collecting money, distributing handbills, interviewing voters, and watching at the polls. From such duties one may be promoted to more responsible tasks in his ward or precinct or town; and finally he may so impress the leaders of the party with his worth that he will be put up for membership on the local party committee. This may be regarded as the first rung of the ladder, and from this he may gradually rise to positions of

great influence and power in state and national party affairs. Of course in states where members of party committees are chosen by direct primary any member of the party may become a candidate for a place on one of the party committees; but owing to the fact that the majority of voters as a rule ignore these candidacies and do not take the trouble to vote for party committeeman, a person's chance of winning one of these posts is very slight unless he has behind him the controlled vote of the party leaders. It very often happens that there is only one candidate for each place on the party committee—the candidate of the machine—and he wins by default because other persons are not sufficiently interested to oppose him or because they do not care to enter what they feel would be a hopeless contest.

It is clear, therefore, that the governing machinery of the party, although it is nominally subject to the control of the rank and file of the party, is actually not subject to effective control by the general membership of the party. For this the rank and file may be as much to blame as the governing oligarchy, for the average party member does not take enough interest in party affairs to make use of the power which the system places in his hands.

Bosses and Machines

Bosses and machines are the outgrowth of peculiar conditions in American party politics. When a little coterie of individuals succeeds in getting control of the machinery of a party in a particular city, county, or state, and then proceeds to use its power for selfish and corrupt purposes, we have what is known as a political machine. The person who occupies the position of chief authority in the machine is called a boss. It is easily possible in most American communities for a machine to be built up. The inertia and apathy of the great mass of voters in party affairs conspire to place the initiative in the hands of the active and interested few, and the complexity of our system of government makes it possible for the few to intrench themselves in power without the great mass of people being aware of how it is done or what it means. A few selfish, strong-willed, and unscrupulous persons who are able to control a limited number of votes can almost invariably place themselves in commanding positions in the party system and thus practically dominate the affairs of the party.

As a rule a political machine consists of a compact organization underlying the regular party organization but at the same time

dominating it. In each ward, precinct, or district there will be a little group of active machine workers. Frequently they maintain an organization in the form of a club of semi-social character. These active workers do the yeoman work of the machine. When there is a caucus or direct primary they see to it that the voters who are in the habit of supporting the "organization" come out and do their bit. They get themselves chosen as delegates to nominating conventions and are elected to positions on the party committee in their precinct, ward, or district, and in these positions they execute the orders of machine leaders higher up. The stronger and bolder leaders among these forces of organized self-interest gradually work their way into the higher positions in the party system, and thus become bosses of greater or less degree. Usually there emerges one individual who through force of character and political adroitness is able to impose his will upon all the others, and he is known as the "big boss".

Once in control of the machinery of the party, the political machine uses its power to obtain the nomination of candidates for public office who will be subservient to the machine; and when these candidates are elected the machine uses them as a means of controlling and dominating the government. By dominating the government of a city, a county, or a state a political machine can conduct a large and lucrative traffic in jobs, franchises, contracts, and various other forms of special privilege, thus richly lining the pockets of its own members.

It would take a large book to discuss all of the reasons why machines and bosses flourish in American politics. The most important cause of machine domination, from the standpoint of the individual citizen, is the citizen himself. Those who seek to get control of the machinery of the party and through that of the machinery of government, for selfish and reprehensible purposes, are organized and determined; while the great majority, who do not approve of machine politics, are without organization, without leadership, and are not held together by strong personal interests. Behind the machine also there is often the power and influence of great corporate interests which favor machine rule because it enables them secretly to obtain special favors and privileges in governmental matters affecting their interests. We may propose and carry through every conceivable reform in the structure and process of government; but we shall not be rid of machine rule until we have a more alert and energetic attitude on the part of the average voter and a greater willingness on the part of the great mass of voters to

lend their active support to organizations designed to prevent and combat machine rule.

The American Party System

From the very beginning of party politics in the country we have had a two-party system. Normally we have always had two major political parties of about equal strength, and the voters upon losing confidence in one have voted the other into power. Each party when in power has endeavored so far as possible to dispossess the other altogether and to avail itself of all the offices and positions under the government. Each has adopted the motto, "To the victors belong the spoils", and each has devoted itself very largely to the dispensing of official patronage. It is in truth the control of the patronage, the business of job brokerage, that has enabled our parties to build up such extensive and permanent organizations. The customary reward for political service is a public job; and the hope and promise of jobs serve to keep the active party workers faithful to the organization and to keep the organization intact.

As a result of this our parties have lost sight of almost everything but the patronage, and our elections have tended to degenerate into struggles between opposing organizations of professional politicians whose supreme object is to get control of the government so as to be able to "shake the plum tree". That is one reason why it is so often difficult to discover the real issues of an election or to discern any fundamental differences between the two parties. Another reason for the similarities between the two major parties is that neither one is at present a homogeneous and unified political entity. Originally each party represented sections and interests which had much in common and stood for a clear and definite body of political principles. But with the tremendous increase in the territory and population of the country and the marvellous diversification of our social and economic life, all this has changed. Both parties, thanks to the force of tradition and the cohesive power of the spoils system, have been able to extend their organization to all parts of the country and to all classes of people; but in so doing they have lost all semblance of unity. Both parties now include many divergent and profoundly antagonistic interests and groups, and to compose their internal differences and to preserve the appearance of harmony and solidarity, as well as to attract votes from all classes and interests, both parties assiduously endeavor to be "all things to all men".

We now have two major parties—the Democratic Party and the

Republican Party. The movement for the foundation of a third great party, which developed in the 1924 presidential campaign, was seemingly premature and does not promise much for the future. In addition to the two major parties we have several minor parties. Let us briefly consider these different party alignments.

The Democratic Party

The Democratic Party of today is the lineal descendant of the party founded by Thomas Jefferson, but conditions have so changed that there is really very little resemblance between the Democratic Party of the present day and the party as founded by Jefferson. The history of the contemporary Democratic Party properly begins with the reconstruction period following the Civil War. The war all but destroyed the old Democratic Party, and had it not been for the intense feeling aroused by the reconstruction policy of the Republican Party it might never have risen again. But the excesses of the "carpet-bag" régime served to revive the Democratic Party in the South and to render it the only party available to the white voter of South. In course of a few years it was again able to make headway in the North and West, owing to the discontent engendered among certain elements of the agricultural and industrial population of those regions with the tariff and other financial policies of the Republicans.

The exclusive and unique principles of the Democratic Party are not as numerous as they once were. It still maintains its traditional stand for a low tariff. It also stands for a rather narrow interpretation of the Constitution and against the extension of the functions of the national government; but during the past two or three decades the party has receded from its formerly extreme position on this point. The Democratic Party claims to stand for a more liberal policy with reference to organized labor than the Republicans, and it also claims to be more "progressive" on economic issues. An examination of the legislative records of the two parties does not, however, reveal any conspicuous differences on this latter point. On foreign policy the Democratic Party in 1920 took a dogmatic stand in favor of American entrance into the League of Nations, and in 1924 it declared in favor of an immediate popular referendum on this question.

The Republican Party

The Republican Party was born just prior to the Civil War, and won its first election in 1860. It resulted from a combination of

those elements in the North and West which were in favor of preventing the extension of slavery, of opening the public domain for easy settlement, and of protecting American industry and agriculture against European competition. With the exceptions of Cleveland and Wilson, all of our Presidents since 1861 have been Republicans. The Republicans have not been so uniformly successful in congressional, state, and local elections.

The Republican Party at present derives its chief support from the industrial, commercial, and professional classes of New England, the North Atlantic region, and the Middle West. It formerly had tremendous strength among the farming population of the Middle West and Far West, but this has been materially impaired during the past two decades. The Republican Party stands for a protective tariff favoring American industry and agriculture. It has usually stood for a generous interpretation of the Constitution and has not hesitated to expand the functions of the national government at the expense of the states. On industrial and economic issues the position of the Republican Party has in general been conservative, and in 1924 the Republican Party became the avowed champion of conservatism in economic matters. With regard to foreign relations the Republican Party has not been wholly consistent. In the past it has tended to favor greater participation in world affairs, but in 1920 it opposed American entrance into the League of Nations and reaffirmed that position in 1924.

Third Party Movements

Third party movements have been common in our political history, but they have not as yet succeeded in breaking down the traditional two-party system. The new party either has displaced one of the old parties or has gradually disintegrated and disappeared. The Republican Party completely supplanted the old Whig Party, but the Populist Party, which made its appearance about 1890, was gradually absorbed by the two older parties, and so was the Progressive Party of 1912.

In 1924, owing to dissatisfaction with the attitude of the two old parties on the labor question and the agricultural situation, a new third party movement was launched under the leadership of Senator Robert M. La Follette of Wisconsin. The nucleus of this movement was in the great brotherhoods of railway employees, the American Federation of Labor, and a number of national farm organizations. It also drew to itself a part of the former Socialist Party. Whether

this movement will develop into a permanent party cannot be predicted at the present moment. The poor showing made in the 1924 election by the La Follette-Wheeler ticket has discouraged many of the leaders, and there are now signs of an early and complete dissolution of the whole movement. If, however, a strong new party should arise without eliminating one of the older parties, we shall witness drastic and far-reaching changes in the operation of our system of government. The present method of choosing the President will quickly go by the boards; the organization and procedure of Congress will be radically changed; and the relations of the President and Congress—indeed, the entire position of the President in the government—will be profoundly altered.

Minor Parties

Minor parties have played an inconspicuous, though not unimportant, rôle in our political life. The influence of most of the minor parties has been much greater than the vote polled by them might seem to indicate. A great many of the minor parties have done most effective pioneer work for new ideas and principles. The leading minor parties at present are the Prohibition Party, the Socialist Party, the Farmer-Labor Party, the Workers' Party, and the Single Tax Party.

The Rôle of the Independent Voter

There is an increasing number of people in this country upon whom party allegiance rests very lightly, and who cannot be classed as consistent members of any party. A study of election statistics would seem to indicate that this body of independent voters now numbers several millions; and it is increasing by leaps and bounds. It may be that this is only a temporary phenomenon, pending the readjustment of party alignments on a more acceptable basis; but there is good reason to believe that in a measure at least it will be permanent. The growing enlightenment of the people in all departments of life and the intensive efforts that have been made in the field of civic education during the past thirty or forty years, have produced a rapidly enlarging class of disillusioned voters who will not easily surrender to party dogmas and catchwords.

In many parts of the country this independent element now holds the balance of power, and is therefore in some respects the most important part of the electorate. Nevertheless, the independent voter

who takes public affairs seriously is confronted with an embarrassing dilemma. The voter who abstains from all party activities or connections has no voice in the making of nominations or the formulation of campaign issues, and no part in the management of the machinery by which these things are accomplished. Moreover, the independent voters are not organized and lack leadership, and for those reasons are not able to make effective use of the power they possess. On the other hand, it is impossible for most persons to pose as active and aggressive partizans one day and as independents the next. To escape this dilemma, a great many persons of independent inclinations remain nominally members of one of the major parties, but take no active part in its affairs.

It is true that the independent voters of the country have a wholesome influence upon the parties, because of the concessions made to the independent vote by competing political parties. But this influence is unfortunately more often of a negative than of a positive character. The independent voters are somewhat like the spectators at a baseball or football game. They take no part in the game but they have a certain psychological influence upon the way the game is played. There are ways and means, however, by which the independent voter, without sacrificing his independence, can play a vital and decisive part in public affairs. These will be taken up in the next chapter.

CHAPTER XXXI

CIVIC ACTIVITIES OUTSIDE OF PARTY

The voter who finds it impossible to accommodate his mind to the atmosphere of partizanship need not want for an outlet for his civic impulses and activities. Owing largely to the failure of political parties to face the issues of the day frankly and sincerely there have grown up all over this country a great many organizations of a civic or semi-civic character which devote themselves to the advancement of special policies or reforms that are not party issues. There are also numberless commercial, professional, and trade organizations which devote themselves in part to civic work. And then there is a whole host of social or partially social organizations which incidentally engage in civic activities. It is a most exceptional person who cannot find an opportunity to become an active worker in one or more of these many different organizations.

National Civic Organizations

Of the scores of national civic organizations the following may be mentioned as among the more prominent and influential: The National Civic Federation, The National Civil Service Reform League, The National Voters' League, The National Popular Government League, The National Municipal League, The National Short Ballot Organization, The Anti-Saloon League, The American Proportional Representation League, The Public Ownership League, The League of Women Voters, The League of Free Nations Association, The Foreign Policy Association, The American Peace Society, and The Society for International Conciliation. Many more of the same general character might be mentioned. Each of these organizations is devoted to some special object or reform, and some of them have achieved an extraordinary amount of power and influence. Membership in these organizations is as a rule open to all who are willing to pay the very nominal membership fees or dues.

State and Local Civic Organizations

In almost every state and in practically every city of any size there are civic organizations devoted to political work independent of party. Nearly every state has its taxpayers' league, its state association for governmental research, its state league of municipalities, its voters' league, and so on; and almost every city has its municipal research bureau, voters' association, citizens' league, and other organizations of like character. These organizations are usually supported by private contributions, and membership is open to all citizens upon payment of a small membership fee. Organizations of this sort make a special effort to check up on the financial operations of state, city, or county government and to keep public officials under close surveillance. Some of them make a practice of investigating the qualifications of candidates for office and making public reports of their findings.

Commercial, Professional, and Trade Organizations

A large number of organizations whose main purpose has to do with the advancement of commercial, professional, or trade interests carry on many incidental civic activities of great importance. Particularly is this true of chambers of commerce, bar associations, labor unions, and farm organizations. Such organizations are conducted on a national as well as a local basis, and many of them have come to wield a tremendous influence in public affairs. The Chamber of Commerce of the United States, the American Bar Association, the American Federation of Labor, the American Farm Bureau Federation, and the numerous local organizations affiliated with them speak with almost conclusive authority on some subjects. Membership in these organizations is open only to persons possessing the requisite commercial, professional, or trade connections.

Social Organizations

A great many organizations of a social character, such as Rotary Clubs, Kiwanis Clubs, and City Clubs, engage in civic activities. Membership in such organizations is always limited to a selected group of persons, but there are so many of them nowadays that it is not difficult for an interested citizen to obtain membership in one or another.

The Power of Non-Partizan Civic Organizations

As a general thing civic organizations of a non-partizan character are interested in the promotion of some special policy or body of policies, and not in the election to office of a particular individual or group of individuals. Their main object, therefore, is to commit the candidates of all parties, and also independent candidates, to the measures which they favor. When such organizations are capable of influencing enough votes to hold the balance of power between the two parties, they may exercise an enormous influence upon the course of public affairs. The career of the Anti-Saloon League is a splendid illustration in point. When independent civic organizations do not hold the balance of power their direct influence in political campaigns is rather limited, but they nevertheless are able to do a great deal in educating the voters and public officials with reference to the measures they advocate. Experience has shown that persistent propaganda is bound to have an effect in the long run.

Civic organizations which make a practice of conducting investigations and giving out information concerning the qualifications of candidates often exercise a decisive influence upon political parties. Owing to our long and complicated ballot there are always a great many voters who realize their helplessness so keenly that they are quite ready to follow the recommendations of such organizations. Party leaders, realizing this, not infrequently take pains to direct the course of the party so as not to incur the opposition of such organizations.

The Limitations of Non-Partizan Civic Organizations

Many non-partizan political organizations are so zealously concerned about the one or two issues in which they are chiefly interested that they virtually ignore everything else. Indeed, there are many instances where such organizations have knowingly condoned grave evils and abuses outside of their own particular sphere of interest, and there are some cases where organizations devoted to a particular reform have compromised with the forces of evil and tolerated most reprehensible things in order to advance their own cause. This may be good politics for the time being, but in the long run it tends to betray public interest and to destroy public confidence in the integrity of these organizations.

Another weakness of many non-partizan civic organizations is that they are not in reality controlled by the rank and file of their mem-

bership. A great many of these organizations find it impossible to operate with the revenues derived from ordinary membership fees and are dependent upon the contributions of persons of wealth for their main support. Some of them, indeed, make no attempt to build up a wide membership and rely entirely upon large gifts. Now unfortunately it is an almost invariable rule that those who put up the money for the support of such organizations dictate their policy. So it often happens that organizations which are nominally independent and non-partizan and which deliberately pose as such, are in reality dominated by a small group of wealthy individuals or by powerful business interests that are not in the habit of tolerating independence or non-partizanship which conflict with their own prepossessions or special interests.

After all, it must be remembered, all civic organizations are purely private organizations and are in no wise responsible to the general public. Their purposes may be noble and unselfish, and they may be just the contrary. In the latter event the general public has no effective means of influencing or controlling their activities; it is far more helpless in dealing with such organizations than with political parties. And even when the aims of private civic organizations are above reproach, they cannot serve as a substitute for political parties. They have no means of getting their programs adopted and carried out except through the election of public officials who are in sympathy with them; so they must either work through existing political parties or become political parties themselves.

CHAPTER XXXII

PUBLIC OPINION

It is often said that voting is but the concrete expression of public opinion. That may or may not be true. There are circumstances, as we have seen, when voting falls considerably short of a true expression of public opinion; and there are times when it is seemingly impossible for public opinion to find adequate expression through the ballot. It is also true that there are many occasions when the course of government is powerfully influenced by public opinion without there being any election to afford an avenue for its overt expression.

What Is Public Opinion?

Some persons think of public opinion as being merely the sum total of the political ideas and views of the people. If that were true, public opinion would be a weird mixture of diverse, clashing, half-formed, and ill-digested ideas and prepossessions. Public opinion of this character is incapable of exerting any real influence and is unworthy of any respect. But there is a type of public opinion which is something more than a miscellany of popular political ideas and concepts, which is, in fact, the product of the interaction of many minds working in and through many different social groups, but which assumes a definite and coherent form and exercises a powerful influence upon the process of government. Take for example the formation of public opinion on the proposed Child Labor Amendment. There was enough active sentiment in favor of this amendment to induce Congress to propose it to the states, but it was not at all clear that it would be favorably received by the states. Gradually, however, there emerged two clear and definite bodies of thought, and before long it became evident that this crystallization of ideas had resulted in dividing the people into two opposing camps, one favoring the amendment and the other opposing it. No one knew which would prevail; but politicians with senses carefully attuned to the slightest vibrations of popular thought knew that some-

thing was happening, and began to scan the horizon earnestly and anxiously. Numerous groups and organizations on both sides began to marshal their strength for the struggle in the state legislatures. Then as legislature after legislature refused to ratify or refused to act until after a referendum, it became evident that a powerful public sentiment, based either upon doubt, misunderstanding, or active hostility, had crystallized against the amendment and had deterred the legislatures from taking favorable action.

As a political force, then, public opinion is the coming together of the minds and feelings of the people, or a large part of the people, in common agreement on the same definite conclusion or body of conclusions. It is, in other words, the result of a process of thinking together or feeling together and arriving at conclusions through group action.

What Public Opinion Does

Public opinion is the ultimate governing force in a democracy. It is a somewhat mysterious and intangible force, but it is nevertheless a vital factor in popular government. It is a strong influence in elections; it governs the making of laws and the enforcement of laws; it sways legislatures and executives, and at times it even invades the courts. Politicians and political parties endeavor with great ardor and energy both to form and follow public opinion. Whatever is insistently and persistently demanded by public opinion must eventually come to pass, and nothing that is contrary to public opinion can permanently endure.

How Public Opinion Is Ascertained

There is no sure index of public opinion, but for the trained political observer there are many signs. To a certain extent the press serves as a guide to public opinion, but newspapers and magazines are often very poor mirrors of public opinion because they concentrate upon the advocacy of their own pet ideas and points of view and do not get in touch with the ground swells of popular feeling which indicate how public opinion is going. The activities of civic organizations may at times furnish a clew to the state of public opinion, but these too are often misleading for the same reason that the press is an unreliable index of public opinion. Perhaps the best way of ascertaining the drift of public opinion is through contact with open-minded and open-eyed persons of all stations and classes in

different parts of the country. Elections are sometimes regarded as infallible indices of public opinion, but such is not the case. At best an election only shows the state of public opinion at a given moment, and our election processes are so defective that an election quite often does not accurately reflect the public opinion of the moment.

How Public Opinion Is Formed

It is not often that public opinion is formed spontaneously and universally. It is generally the result of slow growth and assiduous cultivation. The most potent factors in the formation of public opinion are public discussion, imitation, herd psychology, custom and tradition, and propaganda. These factors do not operate singly and separately, but are fused together in a process that is almost indescribably complex. Public discussion is not confined to the press, the pulpit, the platform, and the the broadcasting station, although these are major agencies of public discussion, but it is carried on with equal or greater effectiveness in the home, the workshop, the office, the store, the club, and all other places where two or more people are gathered together. It is not necessarily based upon facts, and generally involves hearsay, rumor, prejudice, and misinformation. It is nevertheless the matrix in which public opinion is formed. Imitation is one of the strongest factors in the determination of human conduct. Both children and adults learn largely by imitation, and most people acquire many of their opinions through unconscious imitation of others whom they admire and respect. Millions of people take their political opinions ready-made from the President of the United States, the governor of their state, a senator, a congressman, or a mayor in whom they have great confidence and upon whom they look as authority. Herd or group psychology very profoundly affects the formation of all public opinion and all individual opinion. There are herd impulses, herd fears, and herd inhibitions which tend to override all reason and intelligence. Closely related to these are social and political habits, customs, and traditions of long standing. To a large extent these form the bases of herd impulses, fears, and inhibitions, and give rise to the powerful passions and prejudices which so often sweep public opinion from one extreme to another. Of late years deliberate propaganda has come to be a most powerful factor in the formation of public opinion. Propaganda may be carried on through all the channels of public discussion, through pres-

sure upon public men, and through subtle appeals to class, race, and religious prejudices.

Freedom of Speech and Public Opinion

The vagaries and excesses of public opinion are the subject of many cynical comments by those who lack faith in democratic institutions. When the people are deluded by a magnetic and fascinating demagogue; when blind prejudice and passion triumph over intelligence and reason; when stupid loyalty to custom and tradition prevents much-needed innovations; when the people are misled by insidious propaganda, there is much shaking of heads and shrugging of shoulders among the *intelligenzia.* Such persons are unduly pessimistic. They forget that democracy is new, and that very little attention has as yet been given to the formation of public opinion.

It will be conceded that democracy is seriously handicapped by the fact that public opinion may be, and too often is, formed without an adequate basis of fact, and that we have as yet devised no way of correcting this weakness. But the fathers of our government, who were wise beyond their time, laid the foundation for the development of intelligent and informed public opinion when they incorporated in our national and state constitutions provisions forbidding interference with freedom of speech or of press. We do not cherish these monumental constitutional mandates as we should, and of late years we have allowed them to be perverted and distorted until they have lost much of their original force and meaning.

The provision in the First Amendment to the Constitution of the United States forbidding Congress to make any law abridging the freedom of speech or of the press applies only to the national government, and does not operate as a limitation upon the power of the states or their political subdivisions. But virtually all of the states have placed similar prohibitions in their own constitutions, and it would seem, therefore, that freedom of speech is adequately safeguarded. Unfortunately, however, the courts have often interpreted and applied these constitutional safeguards in such a way as to dull their edge and destroy much of their effectiveness. It is held almost universally that they do not constitute absolute guarantees (although the language used could be no more dogmatic and positive), and that Congress and the state legislatures in the valid exercise of their police powers may make laws abridging freedom of speech and of press. Whether a particular legislative act is a valid

exercise of the police power or is a violation of the constitutional guarantees is always a matter for the courts to decide. This leaves the courts in the position of final arbiter in questions of freedom of speech and press, and unfortunately in recent times the courts have shown a tendency in passing on such questions to be swayed by the excitement of the moment, the passions of the mob, and the prejudices of the ruling class.

These guarantees of freedom of speech and of press constitute one of our most precious heritages and should be most jealously preserved. Absolute freedom of public discussion is democracy's only means of neutralizing the effects of prejudice, passion, and propaganda. No individual or group of individuals, no social or economic class, no party or partizan interest has or ever can have a monopoly of the truth. Right is never wholly on one side and wrong wholly on the other; and wise and sound public decisions can only come from the interaction of minds which have been exposed to the fullest and freest possible presentation of all points of view and all allegations of fact.

Suggested Means of Educating Public Opinion

It is admitted in all quarters that the only way in which the vagaries and excesses of public opinion can be overcome is through civic education. In nearly all schools and colleges throughout the country politics and government are now made subjects for special instruction. Inadequate and inappropriate though this instruction has often been, its value is almost incalculable. Hundreds of thousands of young people are leaving our schools and colleges each year with a clearer conception of the nature of our government and a deeper realization of their civic responsibilities. But civic education through the schools does not go far enough. It must continue through life, and it must find a way of reaching the great mass of adult persons who have long since passed out of contact with the processes of formal education.

Efforts must be made through the press and through all sorts of social organizations and agencies to present the message of civic responsibility and to urge people to keep themselves informed and alert. Great advances along this line have been made during the past dozen years, but the value of these achievements has been minimized by the fact that we have no reliable and impartial sources of information to which people can be referred. It has been suggested by many prominent persons that this need may be met by the

establishment of official fact-finding agencies, which would be supported at public expense but would be so constituted as to be absolutely free from any sort of special influence or control. These agencies would thoroughly investigate every public question, but would confine themselves entirely to facts. Their findings would be published broadcast in an effort to reach every voter and supply him with a fact-basis for his conclusions.

CHAPTER XXXIII

CAN DEMOCRACY SUCCEED?[1]

To suggest that democracy may fail, or even that it is yet in the experimental stage, is in some quarters regarded as one of the grosser heresies. That attitude of mind is both irrational and dangerous; for it results in a blind indifference to the defects of democracy and a stubborn and stupid hostility to innovation and improvement. It is possible to have faith in the ultimate success of democratic institutions without closing one's mind to the weaknesses which experience has shown to be characteristic of modern democracies. And if one pays any attention at all to contemporary history, it is impossible to ignore the fact that democratic (or nominally democratic) institutions in a number of countries, such as Italy, Spain, China and several of the Latin American republics, have been unable to withstand the strain imposed by the pressure of modern social and economic forces, and have apparently broken down or received a serious setback which it will take years to overcome. It is well, then, to consider the weaknesses of democracy.

The Weaknesses of Democracy

The shortcomings of democracy are of two general kinds—those which have to do with the organization and structure of government and those which have to do with the underlying substratum of popular capacity and fitness for self-government. In the matter of organization and structure, perhaps the most fatal weakness of contemporary democratic governments is the basis of representation. There is no government in the world today, democratic or otherwise, which accords accurate, equitable, and faithful representation to all groups, classes, and conditions of people. Certain classes and interests are almost invariably excluded from representation, or, if not excluded, are compelled to be represented in such a way as to minimize their influence in government. Such conditions not only

[1] On the subject the student is urged to read Bryce, *Modern Democracies*, especially Chaps. LVIII–LXXX inc.

breed discontent and lead to violence; they result in what has come to be known as "invisible government," i. e., in the development of extra-legal organizations and agencies, such as labor unions and trade associations, which exert an enormous, though largely surreptitious, influence upon public affairs.

A second structural defect in modern democracies is the want of any means of prompt and effective control over public officials. It is not enough to be able to turn public officials out of office at the end of their terms, and be able to impeach or recall them when they have committed certain offenses. To satisfy the requirements of a democracy public officials must be constantly and instantly responsive to popular control. The English system of parliamentary government accomplishes this more nearly than any other system of government at the present time, though it leaves much to be desired. The chief difficulty is that we have no adequate means of ascertaining public will at any given moment except through the cumbersome, unwieldy, uncertain, and expensive process of conducting an election. We insist that the electorate shall be organized and shall act *en masse,* although we surely ought to be aware from our experience in other fields of human activity that there are quicker, surer, and more effective modes of popular organization and action.

A third shortcoming in democratic organization is its almost universally unsystematic and unbusinesslike character. A good machine should consist of the smallest possible number of separate parts, combined so as to operate with the utmost smoothness, precision, and efficiency. Democracy has proceeded on the opposite principle. More consideration has been given to the parts than to the whole. There are altogether too many parts and they are not properly joined together. Something is always getting out of order, and it is exceedingly difficult to make the machine function efficiently.

A close corollary of the foregoing is the unfortunate fact that the machinery of democratic government is often so complex and confusing that the people cannot hope to comprehend it or follow its intricate procedure. They have to vote for too many officials and to watch too many different processes; they have to give as much attention to matters of secondary importance as to the most fundamental questions. As a consequence the people can neither locate responsibility for what goes wrong nor take intelligent steps to rectify what is found to be wrong. It is too much like trying to watch all the performances in a three-ring circus at one time.

But in a democracy the most perfect governmental machine can do no more than reflect the political capacity of the great mass of

people. If a large proportion of the people are illiterate and ignorant; if they lack information and understanding of the true facts involved in public questions; if they are easily misled and misguided; if they are preoccupied with private concerns and indifferent as to public affairs, then, of course, their government will be characterized by grave abuses and calamitous defects. Probably it is too much to expect that there will ever be a people fully equal to the opportunities and responsibilities of democracy—that is the ideal, the goal—but it is an unfortunate fact that democracy has often been thrust upon peoples tragically unprepared for even moderate success in the operation of democratic institutions. In such countries as Italy, Spain, and China the great mass of people cannot even read and write. They are handicapped by the accumulated traditions and prejudices of centuries of political suppression. They are swayed by emotions, doubts, fears, and prepossessions, which, because of the irremediable illiteracy and ignorance of the people, it is almost impossible to overcome. They are unaccustomed to self-government, and therefore are prone to be inert and indifferent in political matters. Moreover, the economic situation of the majority of people in those countries is so desperate that they are almost wholly preoccupied with questions of food, clothing, and shelter. It is not surprising that democracy has failed in such countries; it is only surprising that the failures have not been more complete and overwhelming.

There remains to be considered the so-called "cult of incompetence," the gist of which is that the success of democracy will always be limited by the disinclination of the people to summon to posts of decisive power and influence persons of conspicuous and unusual genius and ability. The basis of this dogma is the assumption that the people prefer their rulers to be like themselves; that they resent the superiority of able and educated persons; and that mass psychology operates so that the reins of government in a democracy are generally turned over to popular persons of mediocre ability. There is of course no conclusive proof in support of this doctrine; and if there were, it would not sustain the inference that the decisive and controlling positions more readily and more frequently fall into the hands of persons of genius and ability under non-democratic than under democratic forms of government.

Conditions Essential to the Success of Democracy

The weaknesses of democracy suggest the conditions which are

requisite for its success. There must, in the first place, be a drastic and sweeping reconstruction of bases of representation and modes of election. Scientific students of government are convinced that the old idea of giving representation to territorial districts on the basis of population must be greatly modified, if not abandoned altogether. Ways and means must be found to give representation to social and economic groups and interests as such and so to bring them directly and openly into the process of government. Present modes of election must be adapted to the new bases of representation, and the election process must be so thoroughly safeguarded as to insure the realization of the expressed will of the people. In addition to this the relation of the people to the machinery of government must be so changed as to facilitate genuine popular control and so as to foster intelligent public opinion and to render it quickly effective in the process of government. There must also be a marked simplification of the mechanics of government and a material modification of the tasks imposed upon the people. The people must not be called upon to vote on matters beyond their possible knowledge or faculties of judgment, such as the selection of scores of executive and judicial officials, nor to vote in such a manner as to dull their discrimination. Simple, unified organization, with the people choosing only a few pivotal, policy-determining officials, and deciding only the more fundamental questions, is absolutely indispensable for the highest success in democratic government.

But far more than perfection in the organization and operation of the machinery of government, successful government in a democracy depends upon the improvement of the political capacity of the people as a whole. This means that the level of popular education must be raised to the highest possible point, and that no expedient must be spared to bring appropriate educational advantages within the reach of all. It means even more than that; it means that democracy as a measure of self-preservation must endeavor to force education upon each individual up to the limit of his maximum capacity. It means also that the public education system of the country must devote increasing attention to the teaching of subjects which contribute to intelligent citizenship, and that this work must not be confined to the schools alone but must reach out to the adult population as well. And it means, finally, that the educated people of the country must be made conscious of the unusual obligations and responsibilities of leadership which rest upon them.

It is likewise essential to the success of democracy that methods be found and steps be taken to supply the people with adequate, ac-

curate, and unbiased information on all basic social, economic, and political questions. The proposal for the establishment of official fact-finding agencies was mentioned in the preceding chapter. Along the same line is the proposal of the Haldane Committee in England in 1918 that there should be established a national ministry of research and information. Something of this sort is an indispensable prerequisite for the formation of intelligent public opinion.

Another thing that is essential to the success of democracy in a large and permanent way is that scientific measures shall be adopted for the progressive elimination of the mentally and morally unfit. In non-democratic countries the reproduction of inferior types may make no great difference, but democracy cannot afford to breed inferiority. Either democracy must find a way to eliminate the unfit or the unfit will destroy democracy. Democracy must also employ all the resources of science in dealing with the millions of persons who, though not inherently inferior in mentality or morality, are socially ill-adjusted and therefore constitute a serious impediment to the proper functioning of democratic society.

Finally, it must be remembered that if history teaches anything at all, it is that democracy cannot thrive when large portions of the people are economically submerged and under-privileged. The concentration of wealth in the hands of a few and the grinding down of the many to a state of dependence and privation is one of the most dangerous conditions that a democracy may be required to face. It is not merely that poverty and want beget discontent and breed revolution, but that people whose souls are harassed by penury and need and whose minds are preoccupied with the stark terrors of the struggle for existence can never develop that intellectual and spiritual poise which is indispensable to intelligent self-government. This is not a plea for socialism, communism, or any other proposed formula for the redistribution of wealth, but simply for recognition of the fact that there has never been a successful, or even a moderately successful, democracy without a reasonably wide and even distribution of wealth. This fundamental truth is substantiated by the story of every democratic government from the dawn of history down to the present moment. The conspicuous success of democracy in the United States, as every close student knows, has been attributable not so much to the superiority of our scheme of government or the inherent virtues of the American people as to the substantial economic well-being of the great majority of people and the continued abundance of economic opportunity. So long as these conditions

continue, there need be no apprehension concerning the future of democracy in America; but if they should fail, as many now prophesy—well, that is a possibility which those who love their country should ponder very seriously.

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PART VII
CONTEMPORARY PROBLEMS

CHAPTER XXXIV

THE NATURE OF MODERN ECONOMIC AND SOCIAL PROBLEMS

I. ECONOMIC PROBLEMS

The economic life of mankind includes all of those activities and processes by which we obtain the necessities of life and by which we satisfy our desires for things which may not be necessities but minister to our enjoyment, comfort, and convenience. We do not live in a Garden of Eden, where all necessities and wants may be satisfied without effort. We have to work for a living. By hard labor and unremitting endeavor we have to convert the resources of nature into food, clothing, shelter, luxuries, comforts, and satisfactions. This is called production. But we must not only produce the goods, commodities, services, or what not that are essential to the satisfaction of our needs and desires; we must also, because we produce not as single individuals but as groups or communities, have some means of dividing the products of our labor among the various members of the group and of enabling each member of the group to obtain what he needs or wants whether he produces it himself or not. This is called distribution. Economic life is made up almost entirely of the activities of production and distribution.

The Old Type of Economic Life

There has been a profound change in the economic life of the peoples of Europe and America during the past century or century and a half. At the beginning of the Nineteenth Century economic life was practically the same as it had been for many centuries—a domestic and handicraft system of production and a very limited system of distribution. Agriculture was virtually self-sustaining. All necessities—implements, machinery, food, clothing, and so on—were produced and used right on the farm. There were very few things it was necessary to buy. Our grandparents and great-grandparents can remember very well the day of homespun clothing, home-made

furniture, and the tallow dip. In Europe and in some parts of the United States the land was held in large estates, and the great mass of agricultural workers were tenants, serfs, or slaves. Industry was organized on the domestic basis. Nearly every master workman owned his own tools and had his workshop in connection with his household. Nearly all processes of manufacture were carried on by hand, very little machinery being used. Thus the weaver, the potter, the shoemaker, the cutler, the blacksmith, the ironmonger, and so on, each purchased or produced his raw materials and with the help of his wife and children and perhaps a few apprentices and employees produced the finished commodities. To all intents and purposes each family was an independent unit of production. Commerce was not carried on at the present large scale. The pedler who rode or drove through the country was quite as important a factor in merchandising as the merchant who operated a store in the city. In proportion to the total volume of commerce luxuries and novelties were perhaps more important items of commerce than now. The vast and intricate system of wholesaling and retailing to which we are now accustomed did not exist.

The New Economic Order

In the early part of the last century there occurred what writers on economics have chosen to call the Industrial Revolution. What happened was that the old system of production and distribution was displaced by a wholly new system. Several marvelous inventions, such as the spinning jenny, the power loom, the steam engine, the locomotive, the steamship, etc., made it possible to evolve a new system of production and distribution. In industry machinery quickly supplanted handicraft methods of production, and the factory displaced the household as a unit of production. In agriculture the farmer ceased to produce all his own necessities. He could now buy tools, machinery, clothing, furniture, and many of his foodstuffs more cheaply than he could produce them himself. The application of machinery to agriculture and the demand for laborers in the factories tended to revolutionize agricultural conditions. The large estates in the end had to give way to the small independent farmer. The enormous increase in production and the corresponding increase in demand following the introduction of the factory system greatly stimulated commerce, and also increased the volume of commerce in necessities. And most significant of all, the industrial worker, and to a certain extent the commercial worker, ceased to be his own

employer. He went to work in a factory or a large commercial establishment as a hired employee. It was no longer possible for each man to own and control his own means of production. Machinery and the necessary buildings and equipment for its use were too costly for the average worker. So too were the stocks and establishments necessary to merchandising and other commercial activity on a large scale. Factories and commercial establishments of all sorts, therefore, came to be controlled by individuals of large wealth or by corporations combining the wealth of a number of individuals. This was the beginning of the era of capitalism.

Traditional Economic Doctrines

Men have long believed that economic life is governed by laws comparable to the laws of physics, chemistry, and mathematics, and many a devoted scholar has set himself to the task of discovering those laws and formulating them for practical use in the guidance of legislators, statesmen, and business men. In a great many cases, however, the supposed laws of economics have proved to be nothing more than theories or hypotheses, which have become the bases of accepted doctrines.

One of the most venerable of the many economic doctrines now held is the so-called law of supply and demand. It was at one time believed that the value or price of any service or commodity required in economic life was determined almost exclusively by the interaction of two factors—supply and demand. If the supply was large and the demand slight, the value or price would be low; if, on the contrary, the supply was small and the demand large, the value or price would be high. In other words, values and prices were supposed to fluctuate in accordance with the relationship between supply and demand. It was also supposed that supply and demand would react upon one another. A large demand would call forth an increase of supply, or an oversupply cause a shrinkage of demand. There is a great deal of truth in the doctrine of supply and demand, but, as will be shown later, we have learned that it is not an inflexible law and that we must be exceedingly cautious in forming conclusions based on the theory of supply and demand.

Another of the traditional economic ideas is the doctrine of free competition. It was believed that if men were allowed to compete in the production and distribution of economic goods and services without any restrictions or limitations that economic life would regulate itself just as water flows down hill or smoke rises in the

air. The operation of the law of supply and demand would enable each person to discover what was best for him and to act accordingly. Each person would buy what he most needed or most wanted, or if the supply was so limited that he could not get what he most needed or wanted, he would take the next best thing. Manufacturers and other producers would find out what was wanted and would endeavor to meet the demand as far as possible. Those who could meet the demand most cheaply and efficiently would succeed and those who could not would fail. Each person would also discover the line of work most profitable to him and would go into it. If competition should render that line of work less advantageous, he would go into another line of work. Men would not continue to buy of producers who made inferior goods or who cheated, and would not continue to work for employers who paid low wages or maintained unsatisfactory working conditions. In brief, free competition would bring about a state of balanced self-interest under which every person would succeed in proportion to his own ability and deserts. Like the doctrine of supply and demand, the doctrine of free competition has been shown to be only partially true.

The "Hands-Off" Theory of Government

It was natural and inevitable that the economic doctrines just described should have a powerful influence upon people's ideas as to the function of government in economic life. Believing that under a state of free competition with the law of supply and demand in full operation economic life would be self-regulating, people demanded that government should so far as possible abstain from interference in economic life. It was conceived to be the business of government to maintain order, to protect persons and property, to provide for the enforcement of contracts, and a few matters of that sort, but not to invade the realm of private life and interfere with what people chose to call their personal liberty to do as they pleased in their economic and social life. This "hand-off" theory of government reached the height of its popularity about the time that our government was founded and was therefore incorporated in our constitutional systems. The restrictions which our national and state constitutions contain with reference to the power of government to interfere with life, liberty, and property are the concrete expression of the "hands-off" theory.

New Economic Difficulties

The new order of economic life did not come into full bloom until after the economic and political doctrines described above had obtained general acceptance; but after the Industrial Revolution became a fact it soon became evident that the old economic and political doctrines could not stand. The doctrine of supply and demand, it was seen, did not altogether fit the facts. And it was also seen that absolutely free competition made possible artificial interference with and manipulation of the forces of supply and demand in such a way as to stifle freedom and equality of economic life and opportunity.

Under the reign of free competition and the free sway of the principles of supply and demand producers in foreign countries had natural advantages which enabled them to sell their goods in the United States for less than they could be produced in this country. Therefore producers and would-be producers (both manufacturers and farmers) in this country began to demand tariffs to protect them against free competition and the law of supply and demand. Under free competition and the law of supply and demand it was impossible to develop the country. There was no profit to be made by building a railway, a road, or a canal into virgin and unsettled territory, and therefore promoters of such enterprises began to demand government aid in the form of grants of land, subsidies, etc., to help them to overcome the handicaps imposed by free competition and the operation of the law of supply and demand. Under free competition and the law of supply and demand the natural resources of the country were prodigally wasted and destroyed, and people eventually began to demand governmental interference to conserve the vital resources of the nation.

It was soon discovered also that improper and unfair interference with the law of supply and demand was possible under the régime of free competition. This was particularly vicious when practiced with reference to necessities of life. An individual, a group of individuals, or a corporation might succeed in getting control of all or the major part of the supply of a particular commodity. By thus creating a monopoly and annulling the law of supply and demand, they could charge extortionate and unreasonable prices. Or by controlling an indispensable channel of distribution, such as a railway system, a canal, docks, depots, or warehouses, competition could be eliminated and monopolistic charges imposed.

It was found, too, that economic life was not self-regulating in other respects. Of course no person would buy contaminated milk, infected meat, or shoddy cloth if he could help it. But most people are not able to tell much about the quality of the things they buy. In many cases it takes an expert to discern the true quality of products offered for sale. It was therefore possible for unprincipled producers to perpetrate gross frauds upon the buying public and to make illegitimate profits.

Likewise no person would, if he could do otherwise, accept employment that did not pay high wages and provide satisfactory working conditions. But it soon appeared that employees often do not have much freedom of choice. They cannot always move to another city or another state just because better conditions of work are promised there. The great majority of working people are tied down to one community and have to accept conditions as they are. Nor can working people move freely from one industry to another in the same community. And the individual employee is particularly helpless as compared with the powerful corporation or employer. The law of supply and demand with reference to human labor did not work out as anticipated.

The New Rôle of Government

As a result of the unhappy condition which arose because of too much personal liberty, there has been an insistent and overwhelming demand that economic life shall be increasingly subject to governmental control and regulation. Some persons have chosen to imagine that this has come about through the demogogic activities of politicians and the insidious spread of socialistic ideas, but such is not the case. It has come about because there has been an absolutely irresistible demand on the part of the great mass of common people —a demand which politicians have not dared to ignore. Socialism has had nothing to do with it. Ninety-nine per cent. of the people of this country do not know what socialism means. They only know that there are many conditions in our economic life which seem to them to call for action of some sort to prevent abuses and improve the welfare of all. And the only means of getting action they know is through government.

Therefore, during the past seventy-five years in this country, the functions of government have been gradually increased and the powers of government steadily enlarged until now there is scarcely any phase of our economic life that is not subject in greater or less

degree to governmental regulation and control. The power and resources of government are used to foster and promote all lines of commerce, industry, and agriculture; to protect and conserve our natural resources; to control and regulate the processes of production and distribution so as to prevent abuses and equalize conditions; to assist and protect labor; to control and regulate money and credit, and for many other purposes. These far-reaching activities of government give rise to many perplexing problems. In all of these problems there are two fundamental difficulties: (1) the question of what is the sound policy from an economic standpoint, and (2) the question of whether the government has the authority and power to do what is expedient and advisable from the standpoint of sound economic policy. For we must remember that our government was established in the heyday of the "hands-off" theory of government, and consequently that there are in our national and state constitutions a great many barriers against governmental activity in the field of economic life. As we take up some of the great economic problems of contemporary life in the succeeding chapters of this book, we shall perceive how these two questions underlie all other issues and considerations.

II. SOCIAL PROBLEMS

Because we live in communities—because we are social animals—we have a great many serious problems to face. It is impossible for people to dwell and work and associate together in large numbers without having numerous difficulties to face as a result of their close contact with one another. These are the so-called problems of social life.

The Old Social Order

It is not so many years ago that society—the people taken collectively—was supposed to have very few responsibilities with reference to the private affairs of its members. Through the power of government it regulated marriage and divorce and defined and punished crimes, and that was about all. Health was entirely a personal or a family matter. Poverty was looked upon as a misfortune of the individual or his family, and was to be relieved, if at all, through private charity or the church. The insane and the mentally deficient were obliged to care for themselves or were cared for by their families. Education was a private matter entirely.

Those who wanted their children educated employed tutors or sent their children to private schools. The personal habits and conduct of the people were subject to few restraints except those imposed by custom. Gambling, drunkenness, and sex immorality, except under régime of the Puritans, were not proscribed by law.

Social Problems of the New Industrial Era

The Industrial Revolution has wrought a great change in the attitude of society toward the formerly private affairs of its members. With the Industrial Revolution there came an unprecedented increase of population. Great masses of people began to migrate to the cities, and under the congested conditions of city life matters that had formerly been of private character became vital to the well-being of the whole population. Disease, sickness, and sanitation were no longer matters of private concern. Society had to look after the health of the individual in order to safeguard the health of all. Poverty and destitution could no longer be regarded as private matters because it became evident that dependency was very often the result of social and economic conditions over which its victims had no control, and also because it became increasingly apparent that it was a problem which cannot be solved by private action. As the conditions of life became more complex there was greater need for education, and so education came to be a public rather than a private affair. Under the altered conditions of life the insane and the mentally defective became not only a special burden upon society, but in some ways a positive menace. The care and treatment of these unfortunate persons therefore became a public obligation. A new conception of crime developed. It was seen that not all crime was to be attributed to the moral obliquity of the offender, but that social and economic conditions should also be largely blamed. Hence arose the ideal of dealing with the criminal in such a way as not only to punish him, but to redeem him. It began to be perceived also that many kinds of personal conduct might be injurious to society, and therefore efforts were made to prevent gambling, prostitution, drunkenness, and so forth.

Government and Social Progress

The functions and activities of government have been multiplied and extended in the field of social life in the same way as in economic life. The "hands-off" policy has been abandoned, and people

are now demanding that government undertake increasingly greater responsibilities in the promotion of social welfare and social progress. We believe today, as never before, that if life is to be made healthy, wholesome, and happy the social life of mankind must be largely controlled and regulated by government. But in this department of life, as in our economic affairs, there are many serious problems. Even though we may be sure of the policies which ought to be pursued, it happens many times that our government lacks the power to put them into effect. The many constitutional limitations upon the power of government to interfere with the freedom of person and property apply in the realm of social reform as well as in the realm of economic reform. We shall have to refer to these difficulties many times as we deal with current social problems in subsequent chapters.

III. THE QUESTION OF ECONOMIC AND SOCIAL JUSTICE

The economic and social arrangements under which we live are very commonly called the capitalistic system, because of the large part played by that thing which the economists define as capital. When an economist uses the term "capital" he means any form of wealth that is used in the production of economic goods. A farmer's horses, his barns, his machinery are capital; a merchant's equipment, fixtures, and stock in trade are capital; a manufacturer's buildings, machinery, and raw materials are capital. Cash money is not regarded as capital unless it is used for productive purposes, and then it is usually converted into buildings, machinery, equipment, goods, etc.

Economists generally say that there are three factors in production—nature (this includes land and all the things external to man which nature supplies), labor, and capital. These three are equally important and equally indispensable, but under our system capital is generally the controlling and decisive factor. That is to say, those who have or control capital are in the dominant position. A factory for the production, let us say, of clothing cannot be operated without land and labor as well as capital. But those who have land only cannot start a factory, and those who have labor only cannot start a factory; but those who have or control capital can do so, because they can buy land and employ labor. Likewise a man who has a vacant lot cannot have a department store, and a man who has only experience and ability in merchandising cannot have a department store, but the man who has capital only can obtain the vacant lot

and employ the skilled merchant and thus have a department store. Thus it is seen that capital in a sense may be said to have the initiative and the power of decision, and land and labor, indispensable though they are, are in a way the servants of capital.

Now in our scheme of life, capital is privately owned and controlled. It is private property. Individuals or combinations of individuals in the form of partnerships or corporations use the capital they have accumulated or are able to control in order to establish and operate mines, factories, railways, steamship lines, stores, and in fact all the different institutions by which economic goods are produced and distributed. These individuals buy and control land and other natural resources for their purposes, and employ labor. They are in fact the governors and managers of our economic life. Capitalists, we call them.

Another curious feature about our capitalistic system is the tendency of capital to gravitate into the control of a relatively small number of persons. This is particularly striking in industry, but is not so noticeable in merchandising or agriculture. In our great basic industries, such as coal, steel, oil, and transportation, there has been during the past half century a very marked concentration of capital in hands of a very few enormously wealthy persons. This does not mean that all of the capital in those industries is owned by a few great magnates, but simply that industry is organized in such a way that, though they do not own all the capital, they effectively control it.

Criticisms of the Capitalistic System

At one time or another each and all of the economic and social ills of the world have been laid at the door of the capitalistic system. It is condemned as being undemocratic, it being claimed that under capitalism a very small proportion of the people control the economic and social life and destinies of the great mass of people. It is denounced as being the cause of rapacious spoliation of labor, it being contended that capital in the seat of power never rewards labor justly and fairly. It is criticized as being unduly wasteful and extravagant, it being said that competition prevents the proper organization of industry and causes overproduction, unnecessary labor, and improper use of land. It is claimed that capitalism produces an unequal and inequitable distribution of wealth, a few people being able to accumulate enormously swollen fortunes and the

great mass of people being kept in poverty. It is insisted also that capitalism is one of the chief causes of vice, crime, misery, and woe.

Socialism

Socialism in theory and in principle is the antithesis of capitalism. According to socialist doctrine, labor is the principal factor in production. Land and capital are admittedly necessary, but labor is regarded as the active, creative factor. The evils of the capitalistic system, in the view of the socialist, are due to private ownership of land and capital. By controlling land and capital it is believed that a few unscrupulous individuals dominate our industrial system and deprive labor of its rightful share of the wealth produced by our industrial processes. The remedy, says the socialist, is social ownership and control of land and capital; and he proposes, therefore, that government ownership and control of land and capital be substituted for private ownership.

There are more varieties and species of socialists than it is possible to discuss in a brief paragraph. There are evolutionary socialists, who believe that by a gradual and slow process of evolution, entirely through the operation of natural forces, the capitalistic régime will be replaced by socialism. There are revolutionary socialists, who believe that the workers ought to unite and proceed by direct and violent means to overthrow the existing order and set up a socialistic system. There are Fabian, or opportunist, socialists, who believe that the workers ought to make use of their political power as favorable opportunity arises to strike at first one and then another of the foundations of the capitalistic system until it is finally supplanted by socialism. There are gild socialists, who believe that the workers in each craft or industry should control and govern that industry, and that general government ownership is neither necessary nor desirable. There are state socialists, who believe that the socialistic régime must be instituted through the agency of the modern political state. There are communists, who would not only abolish private property in land and capital but would not even tolerate private ownership used for consumption.

The criticisms of socialism are just as numerous as those of capitalism, the principal difference being that, aside from the recent case of Russia, socialism has never existed as a fact and therefore could not be charged with the present troubles and woes of society. It is asserted that socialism would destroy personal initiative and

ambition; that self-interest is the strongest motive which prompts people to work and produce, and if this were removed there would be no urge to accomplish anything. It is said that under socialism life would be subject to control and regulation by a gigantic political bureaucracy, which would be susceptible to endless corruption and abuse. It is contended that the socialist over-emphasizes the importance of labor as a factor in production, and that under socialism the condition of the worker would be no better because he could not have the advantage of the use of land and capital to the highest efficiency. It is stated that many of the evils of our industrial system are due to the inherent weaknesses and infirmities of human nature, and that human nature cannot be changed by socialism.

The Single Tax

Like socialism the single tax is a reform proposed with the idea of alleviating poverty and inequality and of correcting the defects of the capitalistic system. According to single tax doctrine the troubles of the present economic and social system arise not so much from capitalism itself as from the fact that land, which is the ultimate source of all wealth, has become scarce and has fallen under the control of owners who are allowed to charge excessive prices for its use. The remedy is not the abolition of private ownership in land, but the single tax. That is to say, all taxes except the tax upon land should be abolished. There would be no taxes on buildings, improvements, or personal property of any sort. The result, according to the single tax doctrine, would be to encourage owners to use their land instead of keeping it idle for speculative purposes. It is pointed out that all increases in the value of idle land are the result of its location with reference to community development, and it is claimed that these increments in value are not earned by the owner of the land, and ought to be taken from him by the state. In the end it is supposed that this would result in the development of the community on a sounder basis and in a more equitable distribution of wealth.

The single tax has never been tried out on a sufficiently large scale to warrant final conclusions as to the soundness of the theories underlying it. Opponents of the single tax object to it as amounting practically to confiscation of land. They point out that the present owners of land in most cases did not acquire it as a free bounty of nature but had to pay for it, and consequently that a depreciation of land values resulting from the single tax would be equivalent to

confiscation. It is claimed also that land is only one form of wealth, and that it is unfair not to tax all forms of wealth as well as land. It is asserted furthermore, that it is not possible in all cases to distinguish between the value of the land and the value resulting from improvements, and that owners would very frequently find themselves taxed for improvement as well as land.

Amelioration of Conditions Under Capitalism

Although it does not seem probable that the utopian dreams of mankind will ever be realized in full, the student of economic and social conditions cannot fail to note many tendencies in the development of the capitalistic system which would seem to be prophetic of a better day. In the first place, whether we approve it or not, we must recognize that there is an irresistible movement toward public ownership in certain fields of industry which are fundamentally vital to general welfare. This does not presage universal public ownership of land and capital, as the socialists would prefer, but it does mean that there are certain fields of enterprise from which we shall exclude private capital unless it can demonstrate that it can serve the interests of all more efficiently and more fairly than can the government. In the second place, we are obliged to recognize that private capital is becoming increasingly subject to elaborate and minute government control and regulation, the object of which is to correct and prevent abuses which are contrary to the interest and well-being of the great mass of people. Deplore this though we may, we may as well recognize it as a fact; for there is going to be no relaxation of public regulation and control—not so long as the great mass of people have the right to vote. If public regulation produces undesirable results, our only recourse is to improve the character of our government and the quality of our public servants. And in the third and last place, we must note that many significant developments are taking place in the form and processes of capitalistic enterprise. Many progressive employers are adopting schemes of profit-sharing, and through adjustments in the internal government of their industries are admitting their employees to a part in the management of the industry. Furthermore, through the organization of labor and the power wielded by great labor unions, it has been possible to bring labor to substantial equality of bargaining power with employers and thus to achieve many advances in wages and improvements in working conditions. These gains will never be lost. Another thing which promises greatly to modify the character

of the capitalistic system is the coöperative movement. For many years the coöperative movement in this country was confined to small enterprises, such as stores and creameries in the agricultural districts. In recent years, however, several of the great labor unions of national scope have entered upon large coöperative programs including banking, manufacturing, mining and merchandising. The significance of these developments cannot be overemphasized, for coöperation is a form of capitalism under which every worker may be a capitalist and have a part in the business. A coöperative enterprise is generally organized as a corporation, and the various workers or coöperators become shareholders. The business is managed by officers and managers chosen by them. Of course they all share the risks of the business as well as the profits.

CHAPTER XXXV

GOVERNMENTAL AID FOR AGRICULTURE, COMMERCE, AND INDUSTRY

I. THE AGRICULTURAL PROBLEM

It is easy for those whose interests are centered in cities and in urban problems to misconceive and underestimate the importance of the agricultural industry and the seriousness of the agricultural problem. We need to remember that agriculture is not only one of our basic industries, but that in a sense it is *the* basic industry. It is from agriculture that we derive the great bulk of our foodstuffs and most of the materials that enter into the production of clothing. A great many of our luxuries and conveniences are also directly or indirectly the products of agriculture. The agricultural industry is, moreover, a vital factor in our commercial and industrial life. A large proportion of the raw materials needed by our factories must come from agriculture. Our railways and steamship lines must look to agriculture for a considerable part of their tonnage. Our manufacturers and merchants are largely dependent upon the agricultural population for the consumption of the goods they make and sell. What would happen to the great industrial and merchandising concerns of our cities if the farmers were unable to absorb their products?

Another thing we sometimes fail to appreciate is the importance of agriculture in our international relations. Suppose we could not produce wheat, corn, wool, cotton, and other such necessities in quantities sufficient to meet the requirements of our population. Suppose we were dependent upon overseas trade and foreign producers to supply us with these indispensable commodities. Could we maintain our traditional detachment and aloofness in international politics? Not for a moment. We should be obliged to embark upon a career of aggressive interference in international affairs that would outdo anything that our European and Asiatic neighbors have done in the past. In the security of our agricultural self-sufficiency it is easy for us to ignore most of the political and economic controversies

which disturb the other countries of the world. If it were not for this, we should be obliged as a matter of self-interest and self-protection to take part in all the conflicts and embroilments of the Old World.

Still another thing that does not seem to be well understood in this country is the close interdependence of city and country. City people fall into the habit of overlooking their utter dependence upon the rural population, and country dwellers fail to perceive that their advancement and prosperity are bound up with the advancement and prosperity of the urban population. The country supplies necessities to the city and furnishes markets for a large part of the products of the city, and the city likewise makes and distributes necessities for the country and furnishes markets for the disposal of the products of agriculture. When there is prosperity in the city, when commerce and industry are flourishing, when wages are high and buying power is at the maximum, the demand for agricultural products is almost unlimited. But when depression strikes the city and buying power is curtailed, the farmer's market is seriously impaired. So also when there is prosperity in the country, when crops and prices are good and buying power is high, there is a tremendous demand for the products of commerce and industry. But a depression in agriculture seriously impairs the market for city products. The larger, busier, and more prosperous are our cities, the better it is for agriculture; and the more productive and profitable are our farms, the better it is for the city.

The Old Type of Agriculture

The type of agriculture which prevailed in this country a century ago, or even as recently as fifty years ago in some sections of the country, was very different from the agriculture of today. In those times the things produced on the farm, except for such commodities as cotton and tobacco, were largely consumed on the farm. The farmer slaughtered and cured his own meat, ground his own grain or took it to the mill and had it ground for his own use, wove his own cloth, made his own clothing, and made many, if not all, of his own tools and implements. Such surplus products as he had were disposed of on the local market, and were often exchanged for other commodities rather than sold for cash. Cash income was not such a vital matter, for there were not many things the farmer had to buy. Only in a few sections of the country was it the practice to concentrate on the production of

one crop which had to be sold for cash in order to procure necessities not produced on the farm. The labor problem was simple. Most of the work was done by the farmer and his family and extra assistance when needed was provided by mutual exchange of labor among neighbors. Land was cheap, and there was an abundant and seemingly inexhaustible supply of free or cheap land to be had by the simple expedient of migration westward. Failure for the farmer meant little more than removal to a new part of the country where land was free and the fertility of the soil greater.

Life on the farm was hard, and without conveniences and advantages. But at that it was about on a par with urban life of the same period. The farmer lighted his house with tallow candles and used an open fireplace for cooking and heating, and so did the city dweller. The farmer obtained his water from a pump or well, and so did the city dweller. The farmer had no plumbing conveniences, and neither had the city man. The farmer had no paved roads, and the urbanite had no pavements or sidewalks that were worthy of the name. The farmer had few advantages in the way of schools and churches, and the city man had none to boast of. On the whole, from the social standpoint, there was little to choose between the city and the country.

The New Type of Agriculture

The Industrial Revolution, the decline of the handicraft method of production, the rise of the factory system, the tremendous growth of cities, and many other factors have conspired to transform the character of our agricultural system. The farmer has ceased to produce for his own consumption, except incidentally. He now devotes himself to the production of crops which must be sold for cash in order to enable him to obtain clothing, food, machinery, and other necessities. And he no longer sells on the local market, but is obliged to sell in a national or international market. In other words farming is now a business, and a very precarious and hazardous one at that. The farmer must buy seed, fertilizer, and machinery; he must hire labor; and he must find a sale for his commodities at a price sufficient to enable him to defray his costs and purchase the necessities which he is no longer able to produce. A crop failure spells disaster. Overproduction, causing a slackening of the market, means the same thing. Transportation is vital, for unless the farmer can get his crops to market in good condition and at a low cost he cannot compete. And the market may be thousands of

miles away from the place of production. Market conditions are so complex that now the farmer must sell through a commission merchant or middle-man, who often exacts an excessive fee for his services.

There is no longer any free land and very little cheap land. It requires considerable capital to get a start in farming, and failure is an extreme calamity because of the difficulty in making a new start. To obtain working capital millions of farmers have been obliged to borrow money and mortgage their farms, and thus to carry the debt charges along with their already heavy operating costs.

The social side of agricultural life has greatly improved, but has not kept pace with the social developments in urban life. The farmer has better roads, better schools, better churches; he has more comforts and conveniences in the home; he has free mail delivery, telephone service, and the like. But in the cities the improvement of social conditions has been so much more rapid and so much more extensive that farm life no longer compares favorably with city life.

Why Agriculture Needs Government Assistance

The agricultural industry needs government assistance in many ways and for many reasons. Agricultural production is a different problem today than it was a century ago. When each farmer produced most of the necessities of life for himself, agriculture was not greatly specialized. Each farmer raised livestock, grew grain and hay, had an orchard, planted a garden, and so on. But it was not necessary to make a commercial success of any of these, because the farmer was not dependent upon a cash income. Moreover, the things produced by each farmer were so numerous and diverse that it was seldom that a crop failure could be so universal as to overwhelm him entirely. But agriculture is now a business in which it is imperative that each farmer shall produce one or more crops which will bring an adequate cash income. Crop failures, whether due to the depletion of the soil, adverse weather conditions, or insect pests, bring almost sure ruin in their train. And commercial failure, i. e., failure to produce efficiently and economically or failure to obtain a profitable market, is equally calamitous. Modern farming calls for sure production and for sure and profitable marketing; and that means that the farmer must know how to get the most out of his soil, how to defeat the plagues and pests, how to improve the quality of his livestock, how to minimize the dangers of the weather, etc.

It also means that he must learn how to prepare his product for the market and where to find a market.

Now there are several million farmers in this country, each of whom is operating on small capital and has not the time or ability to do for himself the things necessary to the improvement of agricultural methods. The farmer single-handed cannot be a soil chemist, a botanist, an entomologist, a veterinarian, a market specialist, and a financier. He must have assistance, and the only way that assistance can be effectively given is through governmental activity. That is not all. There are many conditions with which the individual farmer is unable to cope even though he may understand perfectly what to do. It is beyond the power of the farmer alone to check an epidemic of foot and mouth disease, to combat the boll weevil, stamp out the codling moth, and the like. It is similarly beyond the power of the individual farmer to deal with a railway which makes excessive charges for shipping his products or a combination of commission merchants or packers engaged in beating down prices or speculating in farm products. These are matters for governmental action.

What Our Government Is Doing for Agriculture

Both the national government and the states are doing many things for the benefit and assistance of agriculture. The national government, through its department of agriculture, carries on a vast amount of work in education, research, and the dissemination of information on agricultural subjects. It studies soils, crops, fertilizers, pests and plagues of all kinds, methods of raising livestock, methods of farm management, market conditions, and issues thousands of publications which are widely disseminated throughout the country. It also undertakes active work in the suppression and control of animal and plant diseases, establishes quarantines, and has agents all over the country for this work. The national government also gives financial aid to farmers in many ways. Through the farm loan board it lends money to farmers on easy terms for the purchase of land. Through the protective tariff it endeavors to protect the farmer from foreign competition. Through a discriminatory tax on oleomargarine it strives to protect the dairy farmer from the competition of butter substitutes. Through the Packers' Control Law it seeks to protect the farmer from the possible abuses arising in connection with monopolistic control of stockyards and packing establishments. Through the Lading and Warehouse Act it attempts

to protect grain raisers against unfair treatment in the shipping and storing of grain. These are but a few typical examples of the multifarious activities of the national government with relation to agriculture.

The work of the state governments in behalf of agriculture is about as extensive and varied as that of the national government. In nearly every state there is a department of agriculture, or a number of boards, commissions, and other agencies having to do with agricultural matters. All of the states devote a great deal of attention to agricultural education. There is in every state, either as part of the state university or as a separate institution, an agricultural college. Provision is also made for the teaching of agricultural subjects in the high schools, and sometimes in the lower schools. Every state maintains one or more experiment stations for the study and investigation of scientific problems relating to agriculture. All of the states carry on some activity in the suppression and control of animal and plant diseases. A great many of the states provide for the registration of blooded livestock and forbid the breeding of inferior strains. Most of the states provide for the inspection of dairies, herds, for the grading of grain, fruit, cotton, etc. A few of the states now regulate commission merchants, warehouses, markets, cold storage plants, and other agencies of distribution connected with agriculture.

The Recent Agricultural Crisis

Beginning about the year 1920 and continuing for several years thereafter, there was a serious agricultural crisis. There was widespread and terrible distress and suffering, and thousands upon thousands of farmers lost their farms or came close to this dire calamity. The causes of this condition were complex and difficult to explain to the satisfaction of the agricultural population. In general it may be said that the trouble was occasioned by the lack of adequate means of adjusting the agricultural industry to the business conditions which followed the war. During the war agriculture, like commerce and industry, was enormously overextended. Every available acre of land was put under cultivation, and production, particularly of grain, was pushed to the maximum. The prices of farm land were sent kiting upward, and many persons bought land at these inflated prices in anticipation of continued high prices for farm products. By the close of the war our agricultural industry was producing far more than the domestic market could absorb. When Canada, Rus-

sia, Australia, and the European countries began to produce again, the demand for our agricultural surplus was curtailed. Furthermore, the disturbed conditions which continued in Europe for several years following the war and the low purchasing power of European money as compared with our own made it next to impossible to maintain a demand for American agricultural products even by artificial means. At the same time there was a serious industrial depression in this country, brought on by substantially the same causes which had upset the agricultural industry, and this reduced the domestic demand for agricultural products.

Our commercial and industrial concerns were able to weather the crisis by closing down for a time, by passing the payment of dividends, and by using their reserves. But the farmer could do none of these things, and so had to suffer. It was the opinion of a great many agricultural leaders that the government was culpably negligent in failing to come to the assistance of the farming population, and that the policies pursued were designed to favor commerce and industry at the expense of agriculture. This feeling resulted in a widespread political revolt among the farmers of the Middle West and Far West.

The Needs of Agriculture

The greatest need of American agriculture at the present time is for improvement in the methods of financing the farmer and in the methods of marketing farm products. The farmer needs to be able to borrow money on easier and more liberal terms and to be sure of a market that will yield him an adequate return. There are some who think that these ends can be attained without government assistance, but an increasing number of American farmers seem to think otherwise. Beyond a doubt we shall have a great deal of legislation in this field during the next few years.

Agriculture would greatly benefit by the betterment of social conditions in rural life. Farm life must be made more comfortable, more wholesome, and more advantageous. The improvement of rural schools has been very marked during the past twenty years, but much remains to be done. The rural church must also be strengthened and adjusted to the needs of rural life. Some way must be found to overcome the evils of denominational competition in the rural districts. A great deal may be done also to improve sanitary conditions and other matters affecting rural health.

In concluding it may not be amiss to point out that farmers are

just beginning to appreciate the possibilities of self-help. Co-operative banks, coöperative marketing organizations, and coöperative merchandising organizations can do a great deal to solve the economic problems of the farmer. And organizations of somewhat broader scope, as for example the Grange, can do much to promote the social betterment of agricultural life.

II. PROTECTION AND PROMOTION OF COMMERCE AND INDUSTRY

Commerce consists of merchandising of all sorts, transportation, insurance, banking, etc. Industry consists of manufacturing, mining, fishing, lumbering, and other processes of producing wealth except agriculture. Together with agriculture, commerce and industry are the basic factors of our economic life. Agriculture and industry produce, while commerce distributes. All three are essential, and they are mutually interdependent.

Why Commerce and Industry Need Government Aid

Even at the zenith of the "hands-off" theory of government, it was recognized that commerce and industry must have a certain amount of assistance from government. Where life and property are insecure and order is not maintained, commerce and industry cannot flourish. The contrast between certain eastern countries, where government is weak and banditry and disorder prevail, and the great powers of Europe and America shows how necessary is strong government to commercial and industrial prosperity. But according to the "hands-off" doctrine of government, nothing further is necessary. Government should confine itself to the establishment of order and the protection of life and property, and beyond that commerce and industry should be left to work out their own destiny. It did not take long, however, to disclose the folly of that theory. Commercial and industrial interests were themselves the first to perceive the importance of governmental assistance along many other lines.

It was seen, for example, that commerce and industry require roads, bridges, harbor improvements, and many other aids of that sort which private initiative cannot supply. Compare the condition of a country such as China, where the government does little or nothing for the advancement and benefit of commerce and industry, with the United States where the government strives to provide facilities for commerce and industry. Until recently there were no decent

roads in China. It was not possible for private interests to construct an adequate system of roads, and the government would not. There were few facilities for navigation except those provided by nature, and those were not kept in good condition. There was no way of developing the natural resources of the country or of supplying the needs of the people.

In most countries, also, commerce and industry have demanded and obtained governmental assistance to enable them to compete on even or favorable terms with foreign commercial and industrial interests. To offset natural disadvantages, they have asked and received from the government protective tariffs, subventions of various kinds, or discriminating duties. Without these artificial aids a large part of the commercial and industrial structure of every country would fall to the ground.

Still another field in which commerce and industry are largely dependent upon governmental assistance is in the matter of research, information, and education. The merchant or manufacturer who wants to branch out in foreign trade would find it difficult, if not wholly impossible, to collect the necessary information regarding foreign laws, trade conditions, and so on. But the government through its agents abroad can readily place this information at his disposal. It is the same in certain types of scientific research which enter largely into industrial processes. Only a few of the very large concerns can maintain research departments, but the researches carried on by government agencies redound to the advantage of all.

What Our Government Is Doing for Commerce and Industry

There is not room here to describe or even to mention all of the activities of our government for the encouragement and protection of commerce and industry. The national government comes to mind first, because of the wider sweep of its activities. The protection and assistance of navigation is one of the great responsibilities of the national government. It dredges rivers and harbors, constructs canals (the Panama Canal, for example), marks channels, maintains lighthouses and signal stations, licenses navigators and pilots, and supplies abundant information regarding waterways of all kinds. The national government conducts the postal system with a scheme of rates adjusted to favor commerce and industry rather than personal correspondence. It costs the government just as much to carry an advertising circular from New York to San Francisco as it does to carry a personal letter, but the charge is only half as great.

The national government establishes and regulates standards of weights and measures for the convenience of commerce and industry. It provides for the patenting of inventions and the copyrighting of writings, trade-marks, and music, and protects authors and inventors in their rights. It lends aid to the fishing industry by studies and investigations of the habits and haunts of various kinds of fishes, and of advantageous ways of preparing them for the market. It also maintains fish hatcheries for the purpose of restocking the waters with species that are in danger of becoming extinct. It assists the mining industry in numerous ways, but principally through the research work of the Bureau of Mines in the Department of the Interior. Through the Consular Service, which has agents stationed all over the world, the national government assembles and disseminates information concerning trade opportunities in foreign countries and concerning the activities of foreign trade and industry which might afford us competition. The Consular Service also compiles and supplies information respecting foreign tariff laws and other foreign laws affecting commerce. It assists American navigators and business men in foreign countries, and performs many other services for the benefit of American commerce and industry.

The states are almost as active in the assistance of commerce and industry as the national government, but as a rule their work does not cover such a wide scope. The states, and not the national government, are primarily responsible for the protection of life and property and for the maintenance of order. The states are also responsible for the enactment and enforcement of all branches of commercial law. The states are extensively engaged in the building of paved roads for the advantage and use of commerce and industry, and some of the states have undertaken large canal projects. Most of the states maintain departments or bureaus for the assistance of the mining, fishing, and lumbering industries.

Local government, and particularly city government, is also very active in the promotion and protection of commerce and industry. Local government is a large factor in the enforcement of law and the maintenance of order and security. Counties and cities do a great deal to facilitate commerce and industry by the construction and upkeep of roads, highways, and streets, which serve as channels of commerce and industry. A great many cities have undertaken the construction and operation on a large scale of docks, warehouses, and markets for stimulation and assistance of commerce and industry. Another service of city government which is of enormous benefit to

commerce and industry is protection against fire. Billions of dollars are saved each year by this governmental service.

The Tariff Question

The tariff question has agitated the American people almost from the beginning of their national history. It is a question that is never settled, and that seemingly the people do not wish to settle. By giving the national government exclusive power to lay and collect duties on imports and by requiring that such duties shall be uniform throughout the United States, the Constitution made the tariff distinctly a national issue. There are three possible policies for the national government to pursue. It can levy no charges whatsoever upon imports, and thus pursue a policy of absolute free trade; it can levy duties solely for the purpose of raising revenue for the use of the government and treat all imported commodities substantially alike; or it may make the duties on imports so high as to be practically prohibitive on all imported commodities, or only upon certain articles selected for discriminatory treatment. The controversy in this country has in the main been between the two policies last named—tariff for revenue only and protective tariff. There has been no disposition to abandon import tariffs entirely.

Those who favor high protective tariffs on imports argue that the government ought to protect the commerce, industry, and agriculture of this country against foreign competition in our own markets. This they contend will enable us to build up our own industries, to develop our resources, and to compete with other countries in the commerce of the world. The benefits of this policy it is claimed, are distributed throughout our entire population in the form of better prices for the products of the farm, the forest, and the mine, higher wages and more continuous employment for the worker, and more business and greater profits for the merchant and manufacturer. Those who oppose the high protective tariff and favor low tariff or free trade contend that the alleged benefits of protective tariff are illusory; that the better prices and higher wages are offset by the higher cost to the consumer of everything that he must buy. That is to say, that whatever the farmer, the lumberman, the miner, the worker, etc., may gain by better prices and higher wages he forthwith loses because he must pay more for food, clothing, building materials, machinery, and other necessities. It is claimed in fact that American manufacturers and merchants, being protected

from foreign competition in this country raise prices to unjust and extortionate levels, and actually sell their goods in foreign markets for less than they do here. So it is said the consumer in this country is taxed to support industries which favor the foreign markets, and that in the long run he is poorer than if there were no tariff at all.

The truth probably lies somewhere between these two extremes. In some instances the condition and needs of the country no doubt justifies fostering American commerce and industry by a protective tariff, and in other instances a protective tariff is manifestly a device for exploiting and plundering the American consumer. If tariff rates could be fixed by impartial experts after intelligent and exhaustive study of their effects upon wages, prices, and the cost of living, there would be little room for controversy. But unfortunately the tariff has become a party issue, and most people lose their sanity on party issues. Those interests which want a protective tariff because they conceive it to be good for them, whether it is good for the country in general or not, rally to the support of the Republican party; and conversely those interests which want low tariff or free trade because they think it will benefit them, whether it benefits the country or not, rally to the support of the Democratic party. As a consequence one party or the other is always tampering with the tariff.

When the United States Tariff Commisssion was created in 1916, it was hoped that the tariff issue might be taken out of politics. This body was expected to study the administration, operation, and effects of our tariff laws in an impartial and scientific manner, and to make recommendations and supply information to Congress and the President, and it was supposed that both parties would accept the conclusions of such a body of eminent specialists. Unfortunately, however, the Tariff Commission has become partizan in character, and its conclusions do not, therefore, carry sufficient weight to sway Congress and the country. If the Tariff Commission were made a strictly non-partizan body of distinguished economists holding office for life, it might be possible for it to lift the tariff question out of the mire of politics, but so long as it retains its present character it will tend merely to serve the purposes of the party which controls the majority of its members.

CHAPTER XXXVI

THE REGULATION AND CONTROL OF COMMERCE AND INDUSTRY

"Less government in business and more business in government", ran the slogan of a recent political campaign. It was an appealing phrase, but like so many clever aphorisms it was somewhat misleading. No one would deny the need of better business methods in public affairs, but to couple with this a demand for the curtailment of government regulation and control of commerce and industry is like the fabled attempt of King Canute to sweep back the waves of the sea with a broom. It is, indeed, a curious fact that the very politicians and political parties that are loudest in their denunciations of government interference with business are guilty, when they get into office, of carrying government control and regulation to the farthest extremes. Was it not the Republican party and its candidate who in 1920 so vehemently demanded "less government in business"? And was it not the Republican Party and its President who in 1921–1923 put on the statute books such far-reaching laws as the Packers' Control Act, the Cotton Standards Act, the Filled Milk Act, and the Grain Futures Act? Has not the Democratic Party for decades advocated a return to the principles of Thomas Jefferson, who held that governmental interference with individual liberty should be kept at the minimum necessary to preserve peace and order? And was it not the same Democratic Party, which put on the statute books the Clayton Anti-Trust Law, the Federal Reserve Act, the Merchant Marine Act, the Standard Barrel and Basket Act, the Adamson Act, and many others?

Paradoxes of this sort are very common in American politics, and the explanation is quite simple. When politicians are out of office, their chief occupation is to find fault with the other fellow; but when they come into power they run up against certain stubborn facts which make it impossible to deviate far from the current drift of affairs. Now there are certain plain and obvious facts which make it necessary to subject commerce and industry to increasing public control and regulation, and all the lamentation in the world will not

change these facts. It is a fact, in the first place, that commerce and industry sustain a close and vital relation to the health, safety, and welfare of the people, and that in the absence of government control and regulation business men have been known to pay more attention to profits than to their duties and responsibilities to the public. It is a fact, in the second place, that business is now organized and conducted on so vast a scale that, in the absence of public regulation and control, powerful and unscrupulous business interests can and do exploit and oppress the people with impunity. It is a fact, in the third place, that certain types of business have special advantages which, in the absence of government regulation and control, enable them to disregard the needs and convenience of the public. It is a fact, in the fourth place, that the intervention of government in private business is demanded by business interests themselves for their own benefit and protection. On March 9, 1925, the Ohio Butter, Egg, and Poultry Association, meeting in the city of Cleveland, adopted a resolution demanding federal regulation of the poultry industry along the same lines as the present system of federal regulation in the meat-packing industry. But if Congress should enact legislation in response to this demand, a large number of blind reactionaries would at once declare it to be the result of the insidious influence of the socialists and parlor Bolshevists.

The sum and substance of the whole matter is that the government regulates and controls private economic enterprise because it *must;* and that necessity becomes increasingly imperative with the growing complexity of the commercial and industrial life of the country.

Business and Public Interest

From the standpoint of public interest there are two kinds of business: (1) those types of businesses which, because of their special relation to public welfare, are said to be "affected with a public interest", and (2) those which are only casually and incidentally related to public welfare. The first class includes those forms of commerce and industry which are not only peculiarly indispensable to public welfare, but which are naturally monopolistic in character or cannot be carried on without special powers and privileges. Railways, trolley lines, water-supply systems, electric light and power systems, gas-supply systems, and telephone systems clearly belong in this class. In businesses of this sort competition is either impossible or productive of undesirable results, and furthermore it

is not possible to carry on the business without special rights such as the right to condemn and take private property or the right to make special use of streets and highways in a way that an ordinary private person cannot. Moreover, these businesses perform services which are especially indispensable to the public and which cannot be promptly and readily supplied by other means if they fail. Because of their exceptional importance and peculiar relation to the public, businesses of this kind are subjected to unusually extensive and exacting control and regulation by the government.

Businesses of the second class, and this includes the great majority of commercial and industrial enterprises, come within the scope of public regulation and control only when they are conducted in such a way as to go contrary to laws designed to protect and promote public health, safety, and morals, or when they are fraudulent or monopolistic in character. It may be noted, however, that there is a tendency for certain businesses to pass from the second class to the first. Take, for instance, the meat-packing business. When this industry consisted of a large number of small, independent firms scattered all over the country, its relation to the public was very different from what it is now with the control of the industry concentrated in the hands of a few enormous combinations which dominate the meat-packing industry of the entire country. The packing industry comes very close to being a public utility at the present time, and as such it must submit to an increasing degree of public control.

The Railway Problem

The vast network of railways, amounting in all to over 200,000 miles, is the circulatory system of the country. The railways of the country are not only necessary to every phase of agriculture, commerce, and industry, but are indispensable factors in national defense and in the preservation of our national unity. Our railways grew up in a era of wild speculation and ruthless competition, and as a result were not built to constitute a comprehensive and properly balanced system so much as to further the interests of promoters and speculators. They were not subject to any sort of public regulation and control, and grave abuses soon appeared. Enormous quantities of stocks and bonds were issued and sold and the proceeds went into the pockets of promoters and speculators rather than into the improvement of the property and equipment of the roads. The earning power of the roads eventually proved in-

sufficient to pay interest and dividends upon these "watered" securities, and many roads were forced into bankruptcy and thousands of innocent investors were ruined. Railways also began to practice unfair and unconscionable discriminations between different shippers and different communities. The favored shipper and the favored community were given low rates, often below cost, and the less fortunate shippers and communities were obliged to pay extortionate sums for railway services. There were also discriminations in the distribution of cars, in switching, storage, and other such services. The abuses became so flagrant that there was a universal demand for governmental action, and Congress and the state legislatures responded by the enactment of legislation for the regulation and control of railways.

The railways of the country are now subject to two forms of public control—national and state control. Congress in 1885 enacted the famous Act to Regulate Commerce, which has been greatly extended and modified since that time. This act provided for the regulation of railways only in so far as their interstate business was concerned. Congress had no power to regulate railway business that was confined within the boundaries of a single state. This act with its subsequent amendments applies to railways, sleeping-car companies, pipe lines, telephone, telegraph, cable, and wireless companies. It forbids a great many practices, such as issuing free passes, granting rebates, and pooling receipts. It requires all rates to be just and reasonable and requires the keeping of accounts according to uniform principles. Railways are also obliged to install certain safety appliances, to maintain certain hours of labor, and to provide for the compensation of employees injured in course of duty. To administer the law there is created a body known as the Interstate Commerce Commission, which consists of eleven members appointed by the President and Senate for a term of seven years. Following the example of the national government most of the states have enacted a similar body of law to apply to railways and other carriers as respects their business within the state, and have created railway commissions or public service commissions to administer the law.

The fact that railways are subject to divided control is the cause of very frequent embarrassment and trouble. Most of the important railways of the country cross several states, and it is not always easy to draw the line between interstate business and intrastate business. Moreover, it is difficult to work out a comprehensive and uniform

policy with reference to railways when it is necessary to enlist the coöperation of so many different regulating authorities.

During the war the transportation system of the country was subjected to an unusual strain, and as a war measure the national government temporarily took over and operated all of the railroads of the country. In 1920 the railways were returned to their private owners with provisions designed to improve the transportation system of the country. There is much controversy as to whether the period of federal control was the cause of the present difficulties of the railways. Be that as it may, there is no doubting the seriousness of the present situation. A number of important and vital railway lines are facing bankruptcy, and have been unable to pay dividends on their stocks for a number of years. At the same time farmers and shippers are demanding lower rates and labor is demanding higher wages. On the other hand, a number of the stronger roads are making substantial profits and want to be let alone. Many people believe that the only solution lies in government ownership and operation of all the railways of the country, so that the entire transportation system can be operated as a unit. Thus the large profits realized in some sections would offset the inevitable losses in other sections. Other persons claim that if the railways were compelled to reduce their outstanding securities to a figure representing the real value of the property, they could all make money at reasonable rates. This solution is much easier to propose than to execute. A number of people also see much hope in the proposal, which was embodied in the Transportation Act of 1920, to consolidate the railways of the country into a few great regional systems under the control of the national government. One difficulty with this solution is that the strong and prosperous roads do not want to be consolidated with the weaker roads, and will resist it to the end.

The Public Utility Problem

The railway problem is typical of our public utility problem in general, the main difference being that the railways are of national scope while our other public utilities are of more or less local character. Our principal public utilities in addition to the railways are street-railway and trolley systems, motor "bus" and truck systems, electric light and power systems, gas-supply systems, telephone system, telegraph systems, and water-supply systems. Many of these are now assuming national importance, but the problem of regulation

and control remains for the most part a state and local problem.

Nearly all of our public utilities are what are called natural monopolies. That is to say, the character of the business is such that it must have a monopoly of the source of supply or of the means of distribution. It is rarely possible for a city to have two or more competing systems of water supply, because as a rule there is only one adequate source of supply; and though it is possible for a city to have more than one street-railway system or one electric light and power system or one telephone system, experience has demonstratd competition in these fields tends to produce unsatisfactory service and increased costs. Competition doubles or trebles the burden on the city streets and does not give the service that one company operating throughout the entire city can give. The history of public utility companies has been somewhat similar to that of the railways. At first they were given practically free rein. Then as abuses, such as over-capitalization, excessive rates, and inferior service, appeared there came a demand for public action, and this culminated in various forms of government regulation.

The power to regulate and control public utility companies in each state is vested primarily in the state legislature. The legislature may, in the absence of provisions in the state constitution to the contrary, exercise this power itself or delegate it to other authorities. Many state constitutions now expressly vest the power to regulate local utilities in the cities in which they are located or forbid the legislature to regulate without local consent. The usual method of regulating local utilities is through the franchise. The franchise is a contract between the utility company and the city, whereby the company is given permission to use the streets of the city and to transact business in the city in return for its promise to abide by certain conditions. Franchises very commonly make stipulations with regard to the rates to be charged and the services to be rendered by the company. According to common practice public utility franchises are granted by city councils and enforced by the city law department or by a special department charged with the supervision of public utility companies. In cases where cities do not have the right to regulate their own utilities or where the company renders service to a number of different cities and serves rural territory as well, the power of regulation remains with the state. Nearly every state has a body of law relating to the rights and obligations of public utility concerns and providing for the regulation of their rates, services, and methods of transacting business. There is usually a board or commission to have charge of the enforcement of these laws.

Sometimes the state railway commission handles these matters as well as the regulation of railways, and sometimes there is a special public service commission.

The problem of chief interest to the public in utility regulation is that of rates. The people want low rates, and often would rather have low rates than good service. It is not an easy matter to fix public utility rates justly. The company is a private enterprise in which innocent investors have invested their savings, and must therefore be allowed to earn enough to pay interest on its bonds and dividends on its stock. At the same time if it is permitted full freedom to charge as much as it can get, it is in a position to coerce the people of the city into paying extortionate rates. If a customer thinks he is being overcharged by his grocer, he can give his trade to another grocer; but if he is overcharged by the gas company, he cannot forthwith switch to another company. There may be no other company in the city, and if there is, it may have no lines in his street or his block. Another difficulty arises from the fact that the securities of a great many public utility companies have been "watered" to such an extent that they must pay dividends on a capitalization much greater than the value of the company as a going concern. The long warfare between utility companies and public authorities over the question of rates has resulted in the adoption of the so-called service-at-cost plan in a great many cities. Under this plan the city and the company reach an agreement as to the capitalization of the company and the company agrees not to increase its capitalization without the consent of the city. The city then agrees to allow the company a fixed rate of return, say six per cent., on this capitalization. It is then agreed that the company shall have certain allowances for operating expenses. It is easy then to compute the rates which must be charged in order to enable the company to pay its operating expenses and pay interest and dividends on its capital investment. With this as a basis, a graduated scale of rates is set up, and it is agreed that when operating expenses rise rates shall be increased in accordance with this agreed scale, and conversely when operating expenses fall rates are to be reduced accordingly. This plan has met with considerable success, but it is not without weaknesses.

The regulation of service is a highly technical problem. To compel a street-railway company, a telephone company, a gas company, or an electric light company to use good equipment and render satisfactory service means that a large corps of inspectors must be employed to carry on continuous investigations of the services rendered

and to enforce the regulations of the governmental authorities as to the quality of services to be rendered. These persons must understand the engineering and other technical problems as well as the employees of the company, and perhaps even better.

The difficulties of effective public regulation and control of public utility companies have led many people to favor public ownership and operation of all utilities. It is claimed that public ownership would be much more economical, because there would be no necessity of paying dividends and because the public can borrow money at lower rates than private concerns. It is also contended that better service and lower rates could be had under public ownership. In opposition to these claims it is said that public ownership would throw the management of utilities into politics, and that a perfect carnival of extravagance and waste would be the result. It is also claimed private management is spurred to economy by the profit-making motive, which would not exist under public ownership. The public ownership movement has made great headway in certain fields, especially in the case of water-supply systems and electric light and power systems. It is also making progress in the street-railway field.

The Trust Problem

One of the most striking things about the age in which we live is the tendency toward large-scale organization in business and the concentration of control in the hands of a very small number of persons. In a very real sense it is the age of big business. We have witnessed during the past thirty years the formation, one after another, of gigantic combinations of commercial and industrial interests, each of which has come to be virtually supreme in its field. Such combinations now exist in the steel industry, the oil industry, the tobacco industry, the sugar industry, the meat-packing industry, and on a smaller scale in a great many other industries. These combinations have been called trusts, and their chief characteristic in common is that they are virtually monopolies. Some of them have attained their monopolistic power by getting control of practically all sources of raw material; others have succeeded in getting possession of the principal plants devoted to the manufacture of a particular commodity; and still others have been able to get control of the main channels of distribution. A few of these great monopolies control everything from raw material to the final retailing of the commodity.

A monopoly is not necessarily an evil thing, and may result in a great deal of good. The organization of business on a large scale has undoubtedly resulted in increased efficiency in production and in better standardization and distribution of manufactured products. But at the same time a monopoly in any field is attended by very grave dangers. Like despotism, it may be benevolent and beneficial or it may be oppressive and malevolent, depending entirely upon the character of the persons wielding the power. By crushing out all rivalry and opposition a monopoly is enabled to set aside the law of supply and demand, and to fix prices arbitrarily and without regard to honesty or fairness. And unfortunately the tendency of monopolistic combinations has been to use all means, fair or foul, to destroy competition and then to boost prices to the highest possible level and pile up huge fortunes at the expense of the helpless consumer. It is this aspect of monopolistic combinations that has led to the widespread demand for governmental action to curb the power of these mammoth business organizations.

The old common law of England, which all of our states, except one, have inherited, declared combinations and conspiracies in restraint of trade to be illegal; but it did not serve as an effective deterrent to the formation of trusts and monopolies for several reasons. In the first place, no severe penalties were provided, and in the second place, the law was not sufficiently precise and comprehensive. But even more important than these was the fact that most of these huge combinations are not confined to a single state, and could not therefore be reached by state law. The demand for governmental action to check the formation of trusts and monopolies led to the amplification and strengthening of the anti-trust laws of the states, and the enactment by the national government in 1890 of the Sherman Anti-Trust Act, forbidding and penalizing conspiracies and combinations in restraint of interstate commerce.

The underlying idea of the Sherman Act was that trusts and monopolies are inherently evil and therefore should be abolished by law. To accomplish this severe penalties were provided, and these have been increased by supplementary legislation, and injured persons were given the right to sue and recover threefold damags from those who were guilty of violating the law. We may as well confess at the outset that the Sherman Act has not wholly succeeded in its purpose. A great many people are of the opinion that the chief reason for its failure is that no attempt has been made to enforce it strictly. Others take the position that such a law is unsound in principle and could not succeed under any circumstances. However

that may be, the fact remains that even in cases where it has been possible under the Sherman Act to dissolve a combination (as for example the dissolution of the Standard Oil Company) the dissolution has apparently been more one of form than of fact. The act has undoubtedly done good service in checking some of the more nefarious combinations and in arming the government with a weapon which has enabled it to place all combinations on the defensive, but it has not accomplished the original ideal of abolishing all trusts and combinations in restraint of interstate trade.

In order to strengthen the Sherman Act, to clarify its terms, and to forbid practices not clearly covered by the Sherman Act a large amount of supplementary legislation has been enacted, the most important of which is the Clayton Act of 1914. This law forbids price discrimination, forbids interlocking directorates, forbids one corporation to acquire any or all of the stock of another corporation where the result would be substantially to lessen competition, prohibits the sale of patented articles on condition that the purchaser or lessee agree not to use with them goods or supplies of a competitor, exempts labor unions from the operation of the anti-trust laws, and creates the Federal Trade Commission for the purpose of securing better enforcement of the anti-trust laws. The Federal Trade Commission is a body of five members appointed by the President and Senate for terms of seven years each. The Trade Commission has power to serve notice upon a concern that it is engaged in practices contrary to the anti-trust laws. If the practices are not discontinued, the Trade Commission may then summon the offending parties to a hearing, and if it finds them guilty it may order them to cease and desist from the illegal practices. If the order is not obeyed the Commission may proceed to the United States Circuit Court of Appeals and obtain a formal court order compelling compliance with its order. The Trade Commission also serves as the agent of the courts in supervising the execution of the details of their orders regarding the dissolution of monopolistic combinations. In addition to these powers the Trade Commission is authorized to conduct exhaustive investigations into business practices, to assemble and publish the information which it gathers, to make recommendations to Congress and the President, to require reports from corporations engaged in interstate trade, and to serve as an investigating agency for Congress or the President. There has unquestionably been an improvement in the enforcement of the anti-trust laws since the creation of the Trade Commission, but a great many persons think that it has not been given sufficient power and is too dependent

upon the courts, and upon the will of Congress and the President.

Much as has been accomplished, the solution of the trust problem still lies ahead of us. It may be a mistake, as many believe, to forbid combinations as such and to punish corporations merely because of their bigness. It may be that we ought to distinguish between good trusts and bad trusts, and to attack only the latter. It must be evident, however, that in order to pursue any such policy our government must have far greater power to interfere with private rights and to discriminate between various kinds of individuals and corporations that it now has. Another thing that is necessary if we are to have an intelligent and effective policy with reference to trusts and monopolies is better coördination of effort between the national government and the states. So long as the states or any considerable number of them are lax in the enforcement of their anti-trust laws, it will be impossible to have an effective national policy. Another measure which has a great many advocates is an excess profits tax which would make monopoly less profitable and would recapture for society a large part of the inordinate profits.

Banking and Insurance

From the standpoint of public interest banking and insurance are two of the most important of all businesses. Neither of these businesses can claim to be entirely a private business. The bank and the insurance company receive money from thousands of different individuals under an obligation to care for it and use it without loss to the individuals from whom it is received. Being in such a position of trust, they cannot hope to escape public regulation and control, for it is of utmost importance to society that those individuals and institutions that are entrusted with the savings of the people should be prevented from abusing their trust and misusing the money which comes into their posssession. The individual who deposits money in a bank or takes out a policy of insurance has no means of knowing how his money is being used and no way of anticipating a loss. He is entirely dependent upon the integrity of the bank or the insurance company; and if that fails, it is of little advantage to him to have a legal right to recover because there is usually little or nothing to recover.

The regulation of banking and insurance has fallen mainly to the states. These businesses do not constitute commerce as defined by the Supreme Court of the United States, and therefore even

though they transact business beyond the boundaries of the state in which they are situated they are not engaged in interstate commerce, and hence are not subject to the regulatory power of the national government. In each state there is a commissioner or superintendent of banks and likewise a commissioner or superintendent of insurance. The law with regard to banks generally requires state banks and trust companies to make periodical reports to the banking commissioner as to their financial condition, and empowers the commissioner or his deputies to make detailed examinations of the books, accounts, and vaults of any banking institution in order to ascertain its ability to meet its obligations. If any bank is found to be in an insolvent condition, the commissioner generally has power to order it closed and to take charge of the liquidation of its assets. The regulation of insurance companies proceeds along somewhat the same lines. No insurance company can do business in a state without a certificate from the insurance commissioner. The commissioner has power to examine the books and to require the maintenance of adequate reserves. The laws of the states frequently specify many of the terms of the agreement between the company and the insured, and it is the business of the commissioner to see that these laws are obeyed. If the commissioner finds an insurance company in an unsound condition he may revoke its certificate to do business, and if it is a company that is organized within his state he may close up its affairs entirely.

The national banks occupy a place apart, and as they are an integral part of the national monetary system, they will be considered under that head in a later chapter.

Miscellaneous Business Regulations

A great many of the regulations imposed upon commerce and industry are intended to preserve and promote public health. This subject is treated in full in a subsequent chapter.

Another body of regulations to which commerce and industry are subject is designed to protect and preserve public morals. The national government forbids the circulation of lottery tickets through the mails or other channels of interstate commerce. It forbids the importation of women from foreign countries for immoral purposes, or the transportation of any woman from one state to another for immoral purposes. It also forbids the sending of obscene and indecent literature through the mails. It is now responsible for the enforcement of the prohibition laws. It prohibits the circulation of

prize-fight films in interstate commerce. The states are likewise active in this field. They censor motion-picture films, forbid the use of property for immoral purposes, prohibit gambling and lotteries, and so forth. City government also interferes with private business for the purpose of safe-guarding public morals. It licenses and regulates poolrooms, bowling alleys, cafés, dance halls, and theaters. For the same reason it often subjects hotels and lodging houses to stringent control.

All divisions of our government undertake certain regulations of business in order to protect the public from fraud and deceit. The national government forbids the use of the mails for fraudulent purposes. It requires the branding of all goods sold in interstate commerce to show the true nature of the contents and net weight of the package. It also undertakes to investigate and supervise the storage, weighing, and grading of wheat, flaxseed, and other grains which are held in warehouses for shipment in interstate commerce. Nearly all of the states have legislation of similar character applying to intrastate commerce. Many of the states also have enacted what are known as "blue sky" laws, which very stringently regulate the selling of stocks and bonds. The object of these laws is to protect the people against the sale of fraudulent securities. Municipalities regulate weights and measures, supervise the management of markets, license peddlers and pawnbrokers, and carry on many other activities to protect the people against fraud and deceit.

Public safety is the basis of many kinds of business regulation. The national government, the states, and nearly all cities require common carriers under their jurisdiction to install safety appliances. A great many of the states require factories to provide safety devices in connection with the use of dangerous machinery. Both the states and their various cities have elaborate building codes, which are designed to insure the construction of office buildings, factories, school houses, etc., according to standards that will safeguard the general public.

CHAPTER XXXVII

THE CONSERVATION OF NATURAL RESOURCES

No people in history have been as lavishly endowed with resources for the production of wealth as the people of the United States; and, sad to relate, no people in history have squandered and wasted the patrimony of nature with more prodigal disregard of future consequences than have the free people of this free country. Obsessed with a mania for immediate and excessive profits and quick wealth, we have depleted our soil, devasted our once magnificent forests, exhausted our mines and oil wells, misused our water power and waterways, and destroyed our wild life until we are now face to face with the likelihood of impoverishment and distress in the not distant future.

The Importance of Natural Resources

The natural resources of a country—its soil, its forests, its minerals, its fisheries, its waterways, etc.—are its fundamental wealth. It is from these sources that all forms of wealth and all necessities of life must be derived. A country devoid of these basic resources cannot support a large population, and the population it does support is bound to be in a position of economic servitude to the more fortunate peoples of the earth.

Nature was bounteous with the United States. She gave us everything necessary to the maintenance of life and the production of wealth, and she gave it in such abundance that there could be almost no limits upon the growth of our population and the increase of our prosperity. But we have wasted and destroyed so much of our fundamental wealth that we now find ourselves in a serious predicament. We now have a population of probably 115,000,000 and soon we shall have two or three times that number. Fifty or a hundred years hence, shall we have the resources to provide food, clothing, and shelter, to say nothing of comforts and conveniences, for two or three hundred million people? If the destruction and depletion of our natural resources continue at the

present rate, we most certainly shall not. That is the reason for the conservation movement.

What Conservation Means

A great many people have imagined that conservation means that we should lock up our remaining natural resources and save them for future use. That, however, is not the case. It means that we should make every effort to stop wasteful use of our natural resources; that we should learn to use our resources without wanton depletion and destruction; and that we should undertake as far as possible to replace what has been destroyed before it is too late. Conservation means intelligent, economical and scientific use together with careful replacement and reconstruction.

Conservation of Forests

We once had in this country over a million square miles of splendid forest. Except on the Pacific Coast, the most valuable part of this forest domain has been cut or destroyed. At the present rate of consumption it is estimated that our remaining forests will not last more than fifty years. Not counting the loss from fire we are annually reducing our forests by an amount equal to more than three times their annual growth. In another generation we shall be dependent upon imports from foreign countries for our wood products. And the cost of lumber will rise even more rapidly and excessively than in the past.

Here perhaps is our most urgent conservation problem, and it is one to which increasing attention must be given by the national and state governments. At the present time the work of our government in the field of forest conservation is largely confined to the administration of forest reservations. The national government now has around 150 forest reserves, and a number of the states have set aside large reservations of forest lands. The work of government in the administration of forest reserves is to protect them against fire, to prevent the cutting of timber within their boundaries without governmental authority, to supervise the taking of timber when permission has been granted, and to replant denuded or logged-off areas. In addition to this work, the national government through the Bureau of Forestry in the Department of Agriculture and many of the states through their departments of forestry are carrying on studies and investigations as to the best methods of logging, the

best ways of using forest products, the possibilities of utilizing waste in the lumbering industry, and so on.

But inasmuch as more than three-fourths of the standing timber remaining in this country is in the hands of private owners, the real problem of conservation centers about the question of what can be done to save these privately owned forests. Neither the national government nor the states have as yet established any compulsory regulations for the prevention of fire and waste in private forests; and it may be doubted if the courts would sustain such legislation. The only alternative, then, is to secure the voluntary coöperation of private forest owners in the adoption of conservation measures. Some progress has been made in this direction, but not enough to save our forests from annihilation.

To promote the conservation of our forest resources there are several things that we need to do, and to do immediately. First, we must greatly increase the area of our forest reserves, both state and national. Where public lands are not available for this purpose, private lands should be purchased. Second, we should undertake the replanting of deforested areas on a huge scale. Third, we must take additional precautions to prevent fire both in public and private forests. Fourth, we must control the use of private forests, even if it requires the amendment of our national and state constitutions to do so. Fifth, and last, we must be prepared, if need be, to spend millions of dollars for forest conservation.

Conservation of the Soil

The depletion of the fertility of our soil is as great a danger as the destruction of our forests, and is taking place almost as rapidly. Already large areas which once were abundantly fertile are falling into ruin because of the abuse of the soil or the failure to prevent the wastage of the fertile surface by erosion and floods. This can only mean a decline of rural population and an ebbing away of rural prosperity.

To prevent the destruction of the fertility of the soil by improper farming methods it is of course necessary to teach farmers how to preserve and improve the quality of the soil, and this both the national government and the states are making valiant efforts to do. But it is also necessary that the needed fertilizers should be made available to farmers at reasonable prices. To insure this it is necessary to prevent private monopoly in the fertilizer industry, and to regulate the distribution and sale of fertilizers. This is a problem

which as yet has not been squarely faced by the national government or by the states.

To prevent the destruction of the soil by erosion and floods it is necessary to take measures for the control of streams and waterways, but such measures will afford only partial and temporary relief so long as the rapid devastation of our forests is continued. It has been demonstrated again and again that forest areas perform a vital function in the regulation of the distribution and flow of surface water, and that with the forests gone there is no effective means of checking erosion and floods.

Conservation of Minerals and Oil

We have wasted our coal, iron, oil, and natural gas quite as profusely as our other natural resources. We still have immense mineral resources, but they are going rapidly. We are already importing oil in large quantities, and if we continue our spendthrift career may before long have to import coal and iron. When that time comes, although we may retain our political independence, we shall be a dependent people economically just as the people of Japan, Italy, Germany, and a number of other countries are today.

Unfortunately little has been done thus far to prevent waste and improper exploitation of our mineral and oil resources. The national government some years ago reserved from sale or entry all mineral and oil lands in the public domain, and thus came into possession of many millions of acres of oil and mineral bearing lands. There has been much controversy as to the proper method of development of these lands. In 1920 we finally adopted the policy of leasing them to private individuals for development on a rental basis. The Bureau of Mines of the Department of Interior devotes itself to the study of the development of mines, the utilization of mine products, the marketing of mineral resources, and the improvement of health and safety in mining industries. Many of the states have departments or bureaus which do work of the same character.

The Conservation of Waters and Water Power

The lakes and streams of this country constitute one of our most valuable natural resources. A great many of them are used to supply water to cities; many of them are navigable and are an important factor in transportation; many of them can be used to develop power for industrial purposes; and proper care of the streams

would often do much to prevent floods and the erosion of the soil.

The national government has for years been engaged in the improvement of natural waterways, and millions of dollars have been expended for this purpose. Much of this work has been valuable and beneficial, but there has been a great deal of waste and extravagance because of the fact that political considerations have been allowed to prevent the development and execution of a comprehensive and properly balanced plan of waterway improvement. Members of Congress have been far more interested in the extraction of money from the national treasury for the benefit of the respective states and districts than in proper development of our waterways. A few of the states have undertaken the development of our waterways, but in general this matter has been left to the national government.

There are enormous possibilities for the development of water power in the United States. So long as coal was cheap little attention was paid to water power, but we are coming to realize that in the future we shall be largely dependent upon water power. Very little has been done to control the utilization and development of water power except in the public lands of the national government. Some years ago Congress adopted the policy of withdrawing from entry and sale all public lands having water power sites, but for some years there was controversy as to what should be done with these reservations. Finally in 1920 Congress passed an act providing for the leasing of these power sites for periods of fifty years to private interests. These private companies have to pay a rental to the government and submit to regulation and control by the Federal Power Commission, which consists of the Secretaries of War, Interior, and Agriculture. A few of the states have lands with water power sites, but have not worked out thorough plans for their development.

Reclamation

One of the most important conservation activities of our government is the reclamation of waste lands. We commonly understand the term to refer to the irrigation of arid lands, but it also includes the drainage of swamp lands. It is estimated that there is more land to be recovered for agricultural purposes by drainage than by irrigation. Both the states and the national government have been active in promoting the construction of irrigation projects. Something like thirty large irrigation projects providing water for mil-

lions of acres of land have been put through by the national government. It is estimated that the land values thus created amount in the aggregate to upwards of $500,000,000. In the Department of Interior at Washington there is a separate bureau, known as the Reclamation Service, which has charge of the planning of irrigation projects, supervises their construction, and performs many functions with reference to the administration of completed projects. The activity of the states in the matter of irrigation measures up well with that of the national government, although the projects undertaken are not usually so large. Under the Carey Act the national government has transferred to the states millions of acres of desert land on condition that it be improved by irrigation, and the states on the whole have discharged this responsibility well.

The lands which require drainage before they can be used for agricultural purposes are for the most part not included in the public domain, and therefore do not come within the jurisdiction of the national government. Several of the states in which large areas of such land are to be found have expended huge sums of money for drainage, and have succeeded in reclaiming several million acres of land.

The Conservation of Wild Life

Millions of people yet living can remember when the forests, streams, and coastal waters of this country literally teemed with fishes and fur-bearing animals. Before the ruthless ravages of the trapper, the hunter, and the fisherman a great many of the most valuable species have now become extinct, and the remainder will soon disappear unless steps are taken to check the annual slaughter and protect the wild life of the country. The fur and fishing industries of the country are already in desperate straits, and within a few years may cease to exist entirely.

Most of the responsibility for the conservation of wild life has fallen upon the states. All but one or two of the states now have laws restricting and regulating hunting and fishing. These laws generally limit the duration of the hunting and fishing, and forbid the taking of certain species altogether. The principal criticism offered with regard to such legislation is that it does not go far enough, and is often very laxly administered. A great many states have created game preserves and refuges, and have taken steps to restock their lakes, streams, and coastal waters. The national government protects wild life in the forest reserves, national parks, and in other

parts of the national domain. In 1916 the national government entered into treaty with Great Britain for the protection of great numbers of migratory birds which pass to and fro between Canada and the United States, and in pursuance of this treaty Congress passed an act in 1918 which prohibits the destruction of these birds except under special conditions and limits the power of the states to make contrary regulations. Through the Bureau of Fisheries in the Department of Commerce the national government investigates the causes of the decrease of fish, undertakes the propagation of useful food fishes, supervises the salmon canning industry in Alaska, the taking of fur seals on the Pribilof Islands, and regulates the taking of fur-bearing animals in Alaska.

CHAPTER XXXVIII

MONEY AND CREDIT

The basis of all business is exchange. The farmer raises crops, not that he may consume them all himself, but that he may have something to exchange for things he does not produce; the miner digs coal and iron, not for his own use solely, but for exchange; the manufacturer works raw materials up into finished products in order to have something to exchange for what he does not produce; the merchant buys and sells, not merely for his own needs but to acquire the means for exchange; the lawyer, the doctor, the musician, the sculptor, and so forth, devote their ability and talent to the performance of certain services, not alone for their own satisfaction, but in exchange for things they cannot produce. And so it is with every other occupation and vocation in life.

Money as a Factor in Exchange

Exchange may be carried on in the same simple way that small boys trade marbles for knives or tops for marbles; and among primitive peoples this system of barter is generally used. But barter is a very inconvenient and unsatisfactory method of exchange. It is not always possible for a boy who wants to trade marbles for a knife to find another who wants to trade a knife for marbles; and even if these two particular boys do succeed in getting together neither may have the slightest idea of what his article is worth as compared with the other. The same difficulty is felt in all communities where barter is the principal mode of exchange; it is very hard to carry on business, and no man can have very extensive business relations. But gradually it is discovered that some one or two commodities are more generally prized than anything else, and that every one is glad to accept these commodities in exchange because he knows that if he does not want to use them himself he can readily trade them for something he does want. In the early colonial days in Virginia tobacco was this sort of commodity. Everybody would take tobacco in exchange for his own products because

he could always trade tobacco for other things. Thus tobacco served as a medium of exchange; and trade was greatly facilitated, for it was no longer necessary for the individual who had something to exchange to search out a person who wanted that commodity and was willing to exchange it for something desired by the first individual. It was only necessary to trade it for tobacco, which could be used in exchange for anything else which might be desired; and as every one either had tobacco or wanted it, there was little difficulty in obtaining tobacco in exchange for almost anything of value or of using tobacco to obtain almost anything that might be desired. Furthermore, tobacco was fairly uniform in value, and it was therefore easy to measure the value of other commodities by comparison with tobacco.

Now any commodity which in this fashion serves as a medium of exchange is money. In the history of the human race a great many different commodities have been used as money—furs, shells, cattle, whisky, salt, blankets, and beads. But long experience has demonstrated that the precious metals make the most satisfactory money. There are several reasons for this. In the first place, their value is great in proportion to their weight and bulk; second, they do not fluctuate widely nor rapidly in value; third, they do not deteriorate markedly with time and use; fourth, they can be easily divided into small pieces or quantities and used for transactions of any magnitude; and fifth, they have a great commercial value aside from their use as money. For these reasons every civilized people have sooner or later adopted one or more of the precious metals for use as money, principally gold and silver. The use of gold and silver as money in early times was just like the use of any other commodity for the same purpose. In each transaction the gold or silver required would be weighed out on the scales just like so much merchandise. This, however, was a crude and inconvenient way of handling these metals, and it soon became the practice to work them up into bars or rings with the weight or value of each stamped upon it. Such pieces of gold and silver were just as truly coins as our beautiful modern gold and silver pieces, but they were made and issued by private individuals, such as goldsmiths and bankers. But private coinage of money did not last long for two reasons. One was that kings and monarchs sought to monopolize the function of coinage in order to enrich themselves, and the second was that private coinage resulted in frauds which necessitated and justified the action of kings and monarchs in assuming for the government the sole right to coin money.

In nearly all civilized countries today metallic money in the form

of coins constitutes a very small part of the money in actual circulation. The great bulk of the money in daily use is paper money. Now in one sense paper money is not money at all, but merely a substitute for money. It has practically no inherent or intrinsic value apart from its use as money, and is accepted as money only because the government which has issued it or authorized it to be issued declares that it shall be accepted as worth a certain amount. If the people have confidence in the government and its credit its paper money will circulate at face value; but if not, the paper money will depreciate, and may virtually cease to have any purchasing power at all. There are two main kinds of paper money—that which is sometimes called *fiat* money, because it has nothing back of it except the fiat or command of the government that it be accepted as money at face value, and that which is called *representative,* because there has been deposited in the public treasury or in the vaults of certain banks specified quantities of gold and silver to redeem it if necessary. Representative money is sometimes rather punctiliously called *money paper* instead of *paper money.*

How Credit Supplements Money

Although money is an indispensable factor in exchange, it does not satisfy all needs. If the actual transfer of money were necessary in every transaction it would often be impossible to carry on business at all. The merchant who wants to start in business must have a certain amount of capital or its equivalent in money in order to obtain the equipment and the stock of goods necessary to carry on his business; the farmer who has a fine piece of land must have a certain amount of capital or its equivalent in money in order to prepare the ground for the sowing of his crop and the harvesting of the crop at maturity; the miner who has valuable coal deposits must have a certain amount of capital or its money equivalent in order to dig the coal and place it on the market. Now if the merchant, the farmer, and the miner must each wait until he has by personal saving accumulated sufficient capital or money to carry on his business, the enterprise may be delayed many years or be made altogether impossible. But if it is possible to borrow capital or money from those who have more than they require for their immediate use and return it at a later time when the profits of the business have been realized, the process of production and exchange may go forward without any halt or delay. The merchant may arrange with a wholesale house to send him a shipment of goods with the under-

standing that he is to pay for it six months or a year later; the farmer may obtain supplies and equipment from the merchant under an agreement to make payment at the end of three or four months; and the miner may likewise obtain machinery and equipment from dealer with an understanding to pay later. In each case the exchange has been effected without the use of money, but upon the basis of the "credit" of the merchant, farmer, or miner as the case may be, i. e., upon the basis of the confidence which the lender has in the borrower's honesty, reliability, and ability to make payment when the time arrives. It may happen that the lender is unable to wait so long a time for the return of his money or capital, in which case he may require the borrower to give him a written promise to pay in such form that it can be transferred to a third party. He will then take this written promise to the third party who has confidence in him and exchange it for the sum of money called for, and the third party will collect from the original maker of the promise when the time arrives.

A great many commercial transactions are carried on in this way, but it can be seen that it is a cumbersome and awkward way of using credit. For that reason the preponderant majority of credit transactions are carried on through banks. A bank may be defined as an institution which makes a business of buying and selling credit. That is to say, a bank receives money from those who have no present use for it and lends it to those who need it to carry on their business. The money which the bank receives from its depositors represents their savings or accumulations of capital beyond their immediate needs. The bank takes this money subject to an obligation to return it to the depositor on demand or perhaps to pay it to third persons on the depositor's order, and sometimes it also agrees to pay a certain sum for its use. But banks have learned from experience that they do not need to keep on hand all the money they receive from depositors in order to meet the requests of depositors for repayment. If they keep on hand from five per cent. to thirty per cent. of the total sums received, it is usually sufficient to meet all normal demands of depositors. Thus they have a large surplus which they use to make loans to borrowers, and they make their profit by charging borrowers certain rates of interest for the use of this money.

It can be readily seen that the bank performs two most important functions. It prevents the hoarding of money, thus keeping capital in use for purposes of production, and it facilitates the use of credit, thus making possible a vast number of commercial transactions

which could not be carried on with money alone. The enormous growth of the use of credit is undoubtedly one of the most striking features of business development during the past century. Nearly everybody now uses credit or is in some way dependent upon it. Agriculture, manufacturing, and merchandising could not be carried on at all without credit, and instruments of credit, such as promissory notes, due bills, bills of exchange, bills of lading, etc., are bought and sold much like other commodities, and to a large extent take the place of money.

Necessity for Public Control of Money and Credit

It is easy to see why it is necessary for the government to assume the sole responsibility for making and regulating the value of money, but it is not always easy to perceive the necessity for governmental regulation and control of credit. In the case of money one of the most essential requirements is uniformity of form and value. It is a great burden to commerce and industry to have several different kinds of money in circulation at one time, and the only way this can be prevented is for the government to monopolize the function of coining and regulating the value of money. It is also necessary to prevent the debasement and counterfeiting of money, and the only effective way of doing this is through the power of government. Still another reason for public control of coinage and valuation of money is the necessity for protecting the public from the danger of possible manipulations and sudden changes of the monetary system, which under private coinage could be carried on for the advantage of speculators.

Credit must be subjected to public control and regulation because, in the first place, it has a very close and intimate relation to money and the value of money. Rapid or extreme fluctuations in credit conditions greatly affect the stability of money, and may cause a great scarcity or an overabundance of money. The second reason for governmental regulation and control of credit is that credit has become so vital a factor in our economic life that every possible precaution must be taken to prevent abuses. Through their control of credit the banks of the country wield enormous power in our commercial and industrial life, and they must be prevented from using this power for the special advantage of any one group, class, or interest. And the third reason for public control of credit is that it has been found that without a unified system of regulating credit conditions it is impossible to make adjustments in quick response to

the changing needs of business, and the only way such a unified system of regulating credit can be brought about is through the action of government.

Under the Constitution of the United States the power to coin money and regulate the value thereof is bestowed exclusively upon the national government. The states are not only deprived of all power in this field, but are forbidden to make anything but gold and silver coin legal tender in payment of debts. The states do, however, have the power to charter banks, and through that power may to a limited degree at least regulate credit. But the Constitution has been interpreted to give the national government power to set up a national banking system in order to regulate the value of money, and the control of credit throughout the country has to a very large degree fallen to this national banking system.

Our Monetary System

There are a number of different kinds of money or currency in circulation in the United States at present. They may be enumerated as follows: gold coin, paper certificates representing gold on deposit, silver coin, paper certificates representing silver on deposit, bronze and nickel coin, United States notes, national bank notes, federal reserve notes, and federal reserve bank notes. People have no difficulty in understanding the nature of our metallic money (gold, silver, bronze, and nickel), but although they handle quantities of paper money daily most persons do not understand the nature of the various kinds of paper money. The gold and silver certificates are simply pledges or promises of the United States government, which if presented at the Treasury in Washington will be redeemed at face value in gold or silver, and quantities of gold and silver are kept on hand for that purpose. A person can tell by a moment's examination whether a particular bill is a gold or silver certificate. The United States notes, popularly called "greenbacks" were originally issued during the Civil War as fiat money, i. e., there was no promise to redeem them in gold or silver or to redeem them at all. At the end of the war the government undertook to retire them from circulation, but this was prevented by popular agitation. Steps were then taken to place them on a sound basis, and a redemption fund of $100,000,000 was established for about $345,000,000 of notes. This seemed to satisfy everybody, and they remain in circulation today. National bank notes are a form of promissory note issued by national banks under authority of the United States government, and designed to

circulate as money. The organizers of the bank must purchase United States bonds to the amount of one-fourth of the capital stock of the bank and keep these bonds on deposit with the Treasurer of the United States at Washington. These bonds are held as security for the bank notes issued by the bank, and if it should fail, the bonds will be sold and the proceeds used to redeem the notes issued by the bank. Federal reserve notes are notes issued by banks which are members of the Federal Reserve Banking System, and are secured by gold held in reserve by these banks plus a certain amount of negotiable paper (promissory notes of business men) held by these banks. Federal reserve bank notes are similar to federal reserve notes, except that they are secured by government bonds instead of gold.

Since 1900 our monetary system has been conducted on a gold standard; which means that gold has been made the single unit of value, and that the government purchases only gold for coinage. Silver money remains in circulation, but with no increase in quantity; and when silver money or silver certificates are presented at the Treasury the government will redeem them in gold.

Our National Banking System

Prior to 1913, although we had a large number of so-called national banks which were chartered by the national government and had authority to issue bank notes and were subject to a certain degree of control by the national government, we did not in reality have a unified system of national banks. The result was that it was almost impossible to keep the volume of money and credit properly adjusted to the business needs of the country. It is obvious that when there is an increase of business activity there must be an increase of money and credit to take care of the many transactions which are necessary, and it is likewise clear that when there is a decline of business activity not so much money and credit are needed. Now if it is impossible to change the volume of money and credit according to the needs of business, certain things are bound to occur. If there is a great increase of business without a corresponding increase of money and credit, there will be such a large amount of goods compared to the amount of money and credit that goods will be cheap and money dear, and there will be a sharp increase of prices. On the contrary, when there is a decline of business activity without a corresponding shrinkage of money and credit, there will be such a small amount of goods compared with the amount of money

and credit that goods will be dear and money cheap, and there will be a sharp fall of prices. Some people of course profit by rising prices and others by falling prices, but on the whole these sharp fluctuations do more harm than good, especially when they occur with great frequency.

Banks are a most important factor in regulating the supply of money and credit, because of their power to issue additional currency in the form of bank notes, when it may be needed, and to call it in, when it may not be needed; and also because of their control over the extension of credit to business men. When there is poor team-work or no team-work at all among the banks of the country, it is virtually impossible to expand and contract the supply of money and credit according to changes of business conditions. That was the situation in this country before 1913 when the Federal Reserve Banking System was created.

The Federal Reserve Act of 1913 provided for the division of the country into twelve districts, in each of which there is to be located a Federal Reserve Bank. This Federal Reserve Bank is not an ordinary commercial bank, but deals only with banks in its district. Every national bank in the district must become a member of the Federal Reserve System and must subscribe six per cent. of its capital and surplus for stock in the Federal Reserve Bank in its district. State banks and trust companies may also become members of the Federal Reserve System upon fulfillment of certain conditions. The Federal Reserve Bank in each district is governed by a board of nine directors, of whom six are elected by the member banks within that district and three are appointed by the Federal Reserve Board. The Federal Reserve Board is the governing body for the whole system. It consists of the Secretary of the Treasury, the Comptroller of the Currency, and five other members appointed by the President and Senate.

The Federal Reserve System was planned to accomplish three things: (1) better distribution of bank reserves according to the needs of the country; (2) greater elasticity of credit; and (3) greater elasticity of currency. Previous to the adoption of this act ordinary commercial banks in order to safeguard themselves would make deposits with larger and stronger banks in financial centers, but chiefly in New York. This resulted in concentration of bank reserves in one part of the country and made the financial condition of the country turn almost entirely upon banking conditions in New York City. Furthermore, it was said to place too much power in the hands of New York financiers. Under the Federal Reserve System there

are twelve reserve centers located to serve the convenience of bankers in all parts of the country. The Federal Reserve System provides for greater elasticity of credit by a device known as "rediscounting". When an ordinary bank makes loans to a merchant, a manufacturer, or a farmer it accepts his promissory note and deducts from the principal of the loan a certain sum which is called a discount. This discount is the bank's charge for rendering the service. When the bank has used all its available funds for loans, it has in its vaults a lot of promissory notes (commercial paper) and no means of making further loans until new funds come in. But it may often occur that merchants, manufacturers, and farmers have the greatest need of credit just at the time when the bank's funds run low. Under the old system there was no satisfactory way of meeting a situation of this kind, but under the Federal Reserve System a bank may take its commercial paper, or certain kinds of commercial paper, to the Federal Reserve Bank in its district and obtain a loan from the Federal Reserve Bank. The Federal Reserve Bank accepts the commercial paper as security for the loan, and deducts a small sum for its service, which is called a rediscount. With the money thus obtained from the Federal Reserve Bank the borrowing bank may make further loans to its customers. But the Federal Reserve Bank, instead of making an ordinary loan to the member bank may send it a quantity of federal reserve notes equal to the sum borrowed, and these the member bank may use as money in making loans to its customers. In this way the Federal Reserve System provides for greater elasticity of the currency when needed.

Monetary and Credit Problems

There is increasing dissatisfaction with gold as the basis of our monetary system, and this has been intensified by the fact that during and since the war more than half the world's gold supply has flowed into the United States. We are so overstocked with gold that it is not only embarrassing, but harmful to business. Some people are advocating a return to the coinage of silver in order to enable us to get rid of our superfluous gold, and others point out that this would probably be just as ruinous as the maintenance of the present gold standard. Certain economists, notably Professor Irving Fisher of Yale University, have advanced a proposal for what they call a stabilized dollar, which would not be based upon the value of gold or silver or any other metal, but would be based upon the composite value of a number of leading industrial commodities. The idea is

that gold should not circulate as coin at all, but that a quantity necessary to serve as the underlying basis for paper money should be kept in the government vaults. At a certain time the government would determine the composite value of the leading industrial commodities and on that basis would fix the number of grains of gold to the dollar. Then, as the value of these commodities might fluctuate, the government would increase or decrease the number of grains of gold to the dollar, so that a dollar would always have practically the same purchasing power.

There is also a certain amount of discontent with the Federal Reserve System. Many farmers of the Middle West and Far West are convinced that the system has been manipulated so as to enrich bankers and business men and impoverish the farmer. They claim that the expansion and contraction of credit and currency as carried on by the Federal Reserve System has always favored business as against agriculture, and they insist that the membership of the Federal Reserve Board shall include farmers and also demand certain other reforms in the system. It does not seem probable that there has been any conspiracy against the farmer on the part of the Federal Reserve Board, but it is quite possible that those in charge of the administration of the Federal Reserve System have unconsciously centered their attention more upon the needs of business than upon the needs of agriculture.

CHAPTER XXXIX

PUBLIC FINANCE

It must be perfectly obvious to any one who gives the subject a moment's thought that no government can carry on its work without the expenditure of prodigious sums of money. Where is all this money to come from? Some people seem to think that all the government has to do is to wave the magic wand, and, presto! the treasury is filled. Such people do not have to pay taxes, or they would know better. There is no harder task in the whole process of government than that of getting the money to meet the financial obligations that must necessarily be incurred in transacting governmental business, and there is no phase of governmental activity that gives rise to greater discontent and dissatisfaction. Likewise there is no problem in the whole range of governmental procedure that calls for greater intelligence and statesmanship than the expenditure of public funds.

There is no mystery or magic about public finance. Government must be supported by the people who live under it, and as people are not in the habit of making voluntary contributions to the support of government, the government simply makes use of its power in various ways to take possession of part of the wealth created by its subjects. This is known as the power of taxation. And the revenues which the government derives from taxation are expended for the benefit of the people, and in the process of so doing are in fact redistributed among the people. But they are not given back to the people from whom they were taken in the same proportion in which they are received. From this fact arises one of the most difficult problems of public finance. It is a generally accepted theory that people should be compelled to contribute to the support of government in proportion to their ability, i. e., in proportion to their wealth; but people do not believe that they receive benefits from the government in proportion to their wealth. Hence people who pay taxes, and especially those who pay heavy taxes, are inclined to feel that they are being mulcted for the benefit of those who do not pay taxes or whose taxes are small. Naturally, therefore, they endeavor so far as possible to avoid the payment of taxes, and when that can-

not be done, they try to pass them on to other people by making additional charges for the commodities or services which they have to sell. Consequently many people are of the opinion that in the long run all taxes are shifted to the ultimate consumer. However this may be, it is certain that no tax system yet invented distributes tax burdens with absolute fairness or prevents the shifting of tax burdens to those upon whom they are not directly levied.

Another thing to be borne in mind in connection with the subject of public finance is its vital relation to the economic life of the people. Excessive taxation may seriously cripple commerce and industry, and discriminatory taxation may kill one business and aid another. The expenditure of public funds operates in the same way. Public expenditures may harm or help business, and they may benefit some businesses and drive others out of existence. For this reason there is an endless struggle among competing and antagonistic business and economic interests over questions of taxation and expenditure of public funds. All persons and all business interests or economic groups want low taxes for themselves and prefer that high taxes should fall upon their competitors; and likewise each individual and each business interest or economic group wants expenditures that will be to its advantage and not necessarily to the advantage of its opponents and competitors. Under these circumstances it is quite impossible to have a financial policy that will satisfy every one.

I. PUBLIC REVENUES

The Revenues of the National Government

The income of the national government is derived principally from four sources—income taxes, inheritance taxes, customs duties, and excise taxes. Income taxes are levied upon all single persons having an income of $1,000 a year or more, and upon married persons having an income of $2,500 a year or more. Corporations as well as natural persons must pay income taxes. The rates of payment are graduated according to the size of the income, so that persons with large incomes are taxed proportionately much more severely than persons with small incomes. Certain kinds of income are exempt from taxation, notably that derived from United States bonds and bonds of states, counties, cities, and school districts. By investing most of their fortunes in securities of this kind, many wealthy persons have practically escaped taxation.

Both the national government and a large number of the states collect large revenues from taxes levied upon the estates of deceased

persons. The terms of national and state inheritance tax laws are not identical, and it may so happen that a given estate is taxable by the national government and several of the states. This is felt to be a serious injustice and ought to be corrected. It is proposed that the states should abandon their inheritance tax legislation, and that all inheritance taxes should be collected by the national government, which would turn back to the states on some sort of *pro rata* basis a certain portion of the revenues so collected. It would probably take a constitutional amendment to accomplish this.

Customs duties are taxes levied upon imported commodities. There are two kinds of customs duties, known as *ad valorem* duties and specific duties. *Ad valorem* duties are levied on goods in proportion to their value, the rate of taxation increasing with the value of the goods. Specific duties are levied on particular commodities on a flat-rate basis. The controversial aspects of the problem of customs duties have been discussed in Chapter XXXV, and will not be repeated here.

Excise taxes are taxes levied upon the manufacture or sale of certain commodities. The principal excise taxes at present are levied upon tobacco, spirituous liquors, patent medicines, and automobiles. Nearly one-fourth of the revenues of the government comes from this source.

The remainder of the revenues of the national government comes from many different sources, such as fines, sales of land, rents, earnings of the various departments, and so forth.

The Revenues of the States

Most of the states obtain a large, if not a major, portion of their income from the general property tax. This is a tax levied upon lands, buildings, and personal property according to value. The states do not take all of the income from this tax, but divide it with the counties, towns, and cities. It is generally administered by counties, towns, or municipalities, who turn over to the state its share of the proceeds. A number of the states have given over the general property tax to the exclusive use of counties, towns, and cities.

All of the states derive a large income, and many derive most of their income, from various taxes on corporations. There is usually a charge for granting a corporate charter, an annual charge upon outside corporations doing business in the state, a charge on gross receipts, etc. About three-fourths of the states have in recent years adopted some form of inheritance tax, which is a tax levied upon

the estates of deceased persons before they can descend to the heirs or legatees. The inheritance tax rate as a rule increases with the value of the estate.

An increasing proportion of the annual revenues of the states is derived from taxes on automobiles or the sale of gasoline. Some states have both the annual license tax and the gasoline tax, but there is a tendency where the gasoline tax is introduced to reduce the license tax to a nominal figure.

A few of the states have adopted the income tax after the pattern of the federal income tax, and some of them return a part of the income tax revenues to the counties and municipalities from which it is collected.

A great many of the states, particularly in the South, have occupational and business taxes. These are levied upon certain businesses, professions, and trades, either by flat charges or upon the basis of earnings, sales, or volume of business.

Aside from the foregoing sources, state revenues come from a wide variety of sources.

County and Town Revenues

County and town revenues are derived almost exclusively from the general property tax. This is supplemented to a certain extent by revenues coming from licenses and fees, but these do not bulk large in comparison with the total income of these units of local government.

The revenues of school districts come mainly from the general property tax also, but in most of the states school districts receive certain subsidies from the state. These as a rule are based upon school attendance. In recent years also many school districts have been receiving subsidies from the national government.

Municipal Revenues

Cities as a rule are mainly dependent upon the general property tax. On the average about two-thirds of the total municipal income is from this source. A great many cities are now realizing considerable revenue from the earnings of public utility enterprises, such as water systems and electric light plants. It is a much mooted question whether municipally owned utilities should be operated for a profit. When they are, it means that the load of taxation is placed upon the consumers regardless of ability to pay.

Another large source of municipal income is what is known as special assessments. These are charges levied against property owners for improvements, as sewers, sidewalks, or pavements, abutting their property. Special assessments add nothing to the net revenues of the city, for the city simply charges the property owners the cost of doing the work.

Cities in some parts of the country obtain considerable revenue from poll-taxes, license taxes, business taxes, bill-board taxes, and service charges of various kinds.

II. PUBLIC INDEBTEDNESS

Why Indebtedness is Necessary

It is possible that a government might meet all its needs from year to year by paying cash and levying taxes in corresponding amounts as its needs for cash arise. Thus the people each year would foot the bills arising from the governmental activities of that year, just as people who do their shopping at a "cash and carry" market pay on the spot for everything they purchase. But this policy would have some decided disadvantages in public finance. The needs of government fluctuate greatly from year to year. If a war is in progress or a great program of public works is being put through, the immediate needs for cash may be enormous; while a year or two later, after the war is ended or the public works completed, the needs for cash may be relatively small. To raise taxes for each year's expenses as they are incurred would, therefore, result in a sharply fluctuating tax rate. One year the tax burden would be almost unbearably high, and the following year it might be quite trivial. From the standpoint of the taxpayers this is a most unsatisfactory arrangement, because they can never know what to expect and they find it difficult to understand why taxes should vary so from year to year. Furthermore, when a government pays the cost of a war or the cost of constructing public buildings or the cost of improving roads and streets from the tax proceeds of one or two years, it means that things done for the benefit not only of the present but of the future must be paid for by the present generation of taxpayers. This is considered unfair; it is claimed that tax burdens should be equitably distributed among those who benefit by the purposes for which the money is spent. And finally, it is found to be impossible from a practical standpoint for the government to increase its tax rates and sets its tax-levying and tax-collecting machinery in motion just the instant it finds itself confronted

with an emergency or a change of conditions that may seem to call for the expenditure of increased sums of money. It is not much easier for the government to increase its income quickly than it is for a private individual.

There are only two ways of meeting the difficulties mentioned in the preceding paragraph. One is for the government to borrow money to meet current needs that cannot be taken care of by the tax income of the present year, and to provide for the repayment of these loans out of the tax income of future years. The other is for the government to make a practice of levying taxes in excess of its present needs, and thus accumulate a reserve fund which may be used to finance exceptional requirements. The latter is considered an unsound policy for several reasons. Large cash reserves in the public treasury are a constant temptation, if not invitation, to extravagance and corruption on the part of public officials. Moreover, the building up of such reserves means that wealth must be taken out of the hands of private citizens and sequestered by the government in anticipation of its future needs. This would cut down the amount of capital available for private business and would unnecessarily deprive people of the use of their money. The only alternative is borrowing, and this is the policy pursued by all governments.

How Governments Borrow

Our national government and all of our states, counties, towns, school districts, and cities are constantly borrowing and repaying huge sums of money. This money is borrowed from private individuals who are glad to lend their money to the government because of the interest paid for its use. From the private standpoint lending money to the government is an investment, while paying taxes is an involuntary donation.

The borrowing of money by the government is effected by the issuance and sale of bonds or certificates of indebtedness. These are the written promises of the government to pay a given sum of money at a stated time in the future, and to pay interest at a stated rate. Bonds are generally used in the case of loans that are to run a long period of years, and certificates of indebtedness for loans that are to run for only a short time. When bonds are issued and provision is made for setting aside in a sinking fund a certain amount of money each year so that the accumulated total will be sufficient to pay off the bonds as they fall due, the debt is said to be a "funded debt". And when no definite provision is made for the accumulation of funds

to repay the loan, it is said to be a "floating debt". It is very unwise to permit floating indebtedness to become very great.

Government bonds and certificates of indebtedness are usually placed on the market through the banks, especially the great banking institutions of the large financial centers. Many banks make a business of buying up issues of government bonds and reselling them to persons desiring to invest in securities of that kind. Most banks also have a certain portion of their reserve funds invested in government bonds.

Sinking Funds vs. Serial Bonds

Until ten or fifteen years ago the customary method of providing for the repayment of money borrowed by the government was through the establishment of a sinking fund. Certain sums were set aside each year and paid into this fund. By keeping the money in the sinking fund properly invested and making the necessary additions to it, there would be enough in the sinking fund to retire the bonds when they came due. There is now a very pronounced tendency to forsake the sinking fund method of repayment in favor of the so-called serial bond method. Under the serial bond plan the bonds are not issued so that they all fall due at the same time ten or twenty years in the future, but are issued so that a certain number of them fall due the first year, a certain number the second year, a certain number the third year, and so on until the end of the ten or twenty year period when the last set or series of bonds will be paid off. Many advantages are claimed for the serial bond system. It is claimed to be cheaper, because it saves paying interest on the whole debt for the entire period of the loan. It also eliminates the trouble and danger involved in the administration of sinking funds. It is also said that serial bonds are easier to market because they appeal to many different kinds of investors.

The Dangers of Public Indebtedness

It is so easy to borrow that public officials are prone to resort to this method of raising money indiscriminately and even with the purpose of misleading the public. Borrowing as a policy is not defensible unless the purpose for which the money is used will confer benefits over a considerable period of time. To borrow money for things that are currently consumed, such as fuel, oil, foodstuffs, and the like, is utterly wrong and stupid. And yet it is quite a common

practice for politicians who wish to keep the tax rate down while they are in office to borrow huge sums of money for such current operating expenses. Thus they are able to postpone the raising of the tax rate and create the impression that they are administering the affairs of government very economically. The day of reckoning eventually comes, but being ten or twenty years in the future, the responsibility falls not upon those who created the debt but their successors.

Financing by borrowing very materially increases the cost of government. When a debt runs for a long time the interest charges frequently equal or exceed the principal of the debt. This means that over a long period of years the average rate of taxation will be almost twice what it would have been, had it been possible to finance the activities of government without borrowing. Furthermore, when indebtedness is allowed to increase rapidly an ever-growing portion of the annual income must be devoted to the payment of interest and the retirement of maturing debts. Many cases are on record of cities and school districts being obliged to devote from one-half to three-fourths of their annual income to debt charges. Under conditions of this kind all but the most imperative current needs must be slighted or ignored. Nothing can cripple a government more completely than an excessive burden of debt.

The Pay-As-You-Go Policy

The policy of paying for everything except the most extraordinary objects out of current income, is now being widely advocated, particularly in state and local government. It is claimed that this pay-as-you-go policy would enormously reduce taxes and greatly simplify the financial problems of government. This perhaps might be true in the end, but with all divisions of our government now heavily encumbered with indebtedness, the transition to the pay-as-you-go policy could not be accomplished without much difficulty and possibly some increase of tax rates. There would also be some difficulty, as pointed out above, of avoiding extreme irregularities in the tax rate under the pay-as-you-go policy.

III. PUBLIC EXPENDITURES

Where the Money Goes

Although the functions of national, state, and local government are widely different, it will be found upon careful analysis that whatever

the nature of the work done, they spend their money for substantially the same objects. From forty to sixty per cent., on the average, of the annual expenditures of all divisions of government in this country goes for salaries, wages, and other forms of compensation for officials and employees. The next item of expenditure in order of rank is the purchase of the many different kinds of supplies, materials, and equipment used in the work of government. Next after that comes the amount of money devoted to the payment of interest and principal on public indebtedness. In some cases, as pointed out above, this becomes the principal item of expenditure. Another important item of expenditure is for insurance, rent, transportation, telephone and telegraph service, postal charges, and other services performed on a contractual basis. There is usually a large amount of money expended each year for land, buildings, and structures of various kinds. Another form of expenditure that is growing in importance is that of gifts, gratuities, and contributions in the form of bonuses, pensions, and contributions to pension funds and retirement allowances. In addition to these principal objects of expenditure there are scores of minor items which, being unclassifiable, are lumped together under the heading of miscellaneous.

Careless and Extravagant Spending

Entirely aside from outright corruption and looting the public treasury, which are not as universal as some persons are inclined to believe, there are many ways in which public funds may be expended wastefully and unnecessarily. One of the commonest of these is what may be called padding the payrolls, i. e., employing more people than are necessary to do the work of the government. This is a very common condition in all divisions of government from the national government down to the humblest township. Sometimes it is the result of corruption and venality or the desire of a political machine to provide jobs for all of its henchmen, but just as often perhaps it is due to improper organization and the tendency of heads of departments to overestimate the number of employees needed to do the work. Another frequent cause of extravagance is overestimating the quantities of supplies, materials, and equipment required for the work of government, and purchasing too much. The same thing results when the commodities purchased are of more expensive quality than is required for the needs of the government, or are of very inferior quality considering the price paid. The letting of contracts at excessive figures is also a frequent cause of wasteful spending.

Still another common cause of unnecessary expenditure is what has been termed "log-rolling". Log-rolling results from the efforts of various local communities or sections to get appropriations from the treasury for their own benefit irrespective of whether the objects of the appropriations are worthy of public support. Representatives in Congress, state legislatures, or city councils, in the efforts to obtain appropriations for their localities enter into understandings with one another to trade so as to insure the passage of the desired appropriation bills. This is called log-rolling, after the old pioneer custom whereby neighbors all joined together to help one another roll together the logs for their houses and barns. In the national government a large proportion of the expenditures made for river and harbor improvements, post-office buildings, pensions, and army posts are the result of log-rolling; in the states the same thing is true of appropriations for building roads, supporting state institutions, and so on; in cities log-rolling is very common in connection with appropriations for street and sewer improvements, parks, boulevards, street lights, and the like.

In most cases it will be found that the fundamental cause of extravagant spending is that the organization of the government and the procedure in adopting appropriation bills is such that no single person is responsible for seeing that the utmost economy is practiced in managing the financial affairs of the government. Each department head tries to get as much as he can for his department, and each member of the legislative body tries to obtain as much as possible for his constituency; but there is no one whose business it is to consider all the needs of the government, to balance one against another, and to impose a check upon the extravagant proclivities of department heads and legislators who have their minds fixed on one thing only.

Spending Under a Budget System

To correct the defects of our financial procedure the national government, and a large number of states and cities have adopted what is known as the budget system of financing. Under this system the President, the governor, the mayor or city manager is required to collect estimates of needed expenditures for all purposes, and, after investigating, comparing, and studying them, is obliged to prepare a measure proposing appropriations for all departments and all purposes. This proposed appropriation measure is supposed to represent the best judgment of the chief executive and his assistants as

to what is needed for each and every governmental activity, and if there is any extravagance or waste the responsibility rests squarely and exclusively upon the shoulders of the chief executive. The appropriation measure as prepared by the chief executive is then presented to the legislative body—Congress, state legislature, or city council, as the case may be—and this body must consider, criticize, and pass upon what the chief executive has proposed. If it makes any changes in the measure as proposed by the chief executive, it must assume all responsibility and be prepared to defend them. When the legislative body has finished its consideration of the measure presented to it by the chief executive, it passes the bill and thus by one act makes all appropriations for the ensuing year or two years as the case may be. After this no money may be expended for any purpose or in any amount not specified in the appropriation bill.

The advantages of the budget system are that it centralizes responsibility for financial policy, makes possible careful planning, and places a definite check upon waste and extravagance.[1]

Central Purchasing

Another reform that goes hand in hand with the budget system in promoting economy is central purchasing. It has been found that when each department and agency of government is left free to pur-

[1] According to the New York Bureau of Municipal Research the budget as presented by the executive to the legislature should contain the following:

1. A balance sheet showing what the government owes and what it owns.
2. A fund statement showing the condition of the various appropriations, the amount of appropriations remaining unencumbered, and the amount of revenues remaining unappropriated.
3. A statement of past operations and an estimate of next year's operation—showing in comparative form as a basis for judgment the revenues and expenses which accrued during each of the preceding two years, and the estimated accruals for the next year—the revenues classified according to sources and the expenses classified according to functions and subfunctions. The statement of expenses of past years should be supplemented by detailed statements of unit costs of all kinds of services for which it is possible to prepare such costs.
4. Explanatory text relative to conditions, reasons, etc., connected with the estimates for the ensuing year; also a work program showing the undertakings to be begun and those to be completed during the next year and each of several years in advance.
5. An appropriation bill containing amounts and all necessary phraseology relating to specifications, requirements, and conditions governing the expenditure thereof.
6. Proposed measures for revenue-raising and for borrowing.

chase its own supplies, materials, and equipment in its own way, great waste is likely to ensue. Most heads of departments are not expert in the art of buying and are seldom qualified to judge as to quality and price. As a result they are rather easily victimized by shrewd dealers. It also happens at times that heads of departments favor one dealer as against another in order to get a "rake-off" or commission, or in order to get political support. It is also true in most cases that no single department purchases in sufficient quantities to get the advantage of the low prices which are quoted to large buyers. It is to correct these and other less serious defects that central purchasing is introduced. Under central purchasing all buying is done by a special department, known as the purchasing department or purchasing bureau. The head of this department and the persons employed in it are supposed to be experts in the buying of all kinds of merchandise. They are familiar with market conditions and with the various commodities which are to be purchased, and can as a rule buy very much more shrewdly than an inexperienced department head. The purchasing bureau is also able to buy in huge quantities and thus to get the benefit of the lowest obtainable prices. And it is not easy for corruption to make headway in a purchasing department, because the purchasing department is under observation constantly, both by dealers and by heads of other departments; whereas under decentralized purchasing it is almost impossible for dealers or any one else to keep track of the purchasing activities of a dozen or more different departments.

CHAPTER XL

THE LABOR PROBLEM

All people who perform personal services for a compensation are in a broad sense laborers, but in common usage the terms "labor" and "laboring class" have come to refer only to manual workers who receive daily, weekly, or monthly rates of payment for their services. The distinction is a natural one because the great mass of manual laborers, whether skilled or unskilled, occupy a somewhat different economic position from salaried and professional workers.

The Economic Position of Labor

The first fact which tends to fix the status of labor is that as a general rule labor has no voice in management. The laborer cannot determine his own duties, control his own time, or regulate the conditions under which he works. He is a hired employee who must take orders and accept working conditions fixed by his employer. The second important fact that conditions the position of labor in economic life is that labor as a rule experiences most of the disadvantages and few of the advantages of the operation of the law of supply and demand. The laborer cannot create a job for himself; he can only work when employment is given to him. And he cannot easily adjust himself to changes in the demand for labor. Commodities are mobile, and in general can be readily sent to the most favorable market; but the laborer cannot be always on the move as labor conditions change. He is tied down by family responsibilities and by limitations of ability which make it impossible for him to seek new employment whenever conditions become adverse. Recently there was a serious depression in the steel industry, accompanied by unemployment and wage reductions. At the same time there was a boom in the lumber industry, accompanied by a strong demand for labor at good wages. But it was impossible for any considerable number of steel workers to move to the lumber camps, because they could not bear the expense of transporting themselves and their families across the continent and also

because most of them were not qualified for work in the lumber industry. On the whole, therefore, the great mass of laborers have to put up with conditions as they are in the communities in which they are settled.

A third fact that deeply affects the economic position of labor is that the law of supply and demand does not work the same in case of human services as in the case of material commodities. It very frequently happens that an enormously increased demand for labor will raise wages to a point where it is more economical to displace labor by machinery, and when this occurs labor is prevented from reaping the full advantage of scarcity of labor. Furthermore, the demand for labor is capricious, variable, and seasonal. The demand is not for labor in general but for particular types of labor at particular places. And the supply at those points may be inadequate or excessive without profoundly affecting conditions in other places or other industries. Another fact that affects the situation of labor is that the laborer is not in as good a position to demand his own price for his labor as is the employer to demand his price for the finished commodity. To a certain extent the laborer can hold out for higher wages, but not for long, because he must work or starve. The employer, on the contrary, is generally in a better financial position. He may have money in reserve, or he may be able to obtain loans from the banks to tide him over a period of depression and to enable him to withhold his product from the market until prices are better. And he can always curtail production and reduce wages.

For these reasons labor occupies a position of insecurity, dependence, and often of sheer helplessness which is not the lot of the salaried, professional, and employing classes.

Labor Organizations

Realization of the insecure, hazardous, and often helpless position of labor has led to the formation among the laboring classes of all countries of labor unions and other organizations designed by mutual aid and united action to improve the lot of the laborer and strengthen his position in dealing with his employers. There are several different types of labor organization, but the two most important are the trade or craft union and the industrial union. A trade union is an organization made up of the workers of a single craft or trade, as the carpenters, the bricklayers, plumbers, electricians, etc. An industrial union is an organization made up of

all the workers in a given industry, without regard to crafts, as the mine workers, the metal workers, the garment workers, etc. Some unions combine the characteristics of both types. Labor unions consist of local unions, which include the workers of a given locality or community; state or district unions which are formed by the affiliation of all the local unions within a given state or district; and national or international unions, which are formed by the affiliation of all local, state, and district unions to make an organization of national or international scope. Over and above these vast organizations which proceed along trade or industrial lines there are interlocking organizations established by the federation of a large number of national and international trade and industrial unions. The American Federation of Labor is an organization composed of nearly all the great trade and industrial unions of this country, except the railway brotherhoods. The Industrial Workers of the World, commonly called the I. W. W., is an attempt to unite all workers in one big union irrespective of trade or industrial lines.

The activities and purposes of labor unions are too varied and complex for exhaustive treatment here. Perhaps the chief activity and most fundamental purpose is what has come to be known as collective bargaining. Under collective bargaining all dealings with employers with respect to wages, hours of labor, and other working conditions are carried on, not by the individual worker but by the union. The officials of the union by vote of the members are authorized to act as their spokesmen and to make agreements with employers which will be recognized as binding upon all members of the union, and the individual members of the union decline to make any agreements with their employers except through the union. Thus the employer is obliged to deal with the workers as a body instead of with the workers as individuals. This unity of action greatly enhances the power of the workers to obtain higher wages and more satisfactory working arrangements, and also enables all employees to obtain the same treatment. When an employer refuses to recognize the right of the union to speak for his employees, or when an employer refuses to accede to the terms demanded by the union or violates an agreement made with the union, the union endeavors to coerce him.

The principal weapons of the union are the strike and the boycott. A strike occurs when the employees refuse to work and use all their influence and power to prevent the filling of their places. The object of a strike is to make it impossible for the employer to obtain the labor necessary to carry on his business and thus to

force him to yield to the demands of the union. If all workers were union members, this would be comparatively easy to do; but since there are very few crafts or industries in which it has been possible to unionize all the workers, it is sometimes very difficult for unions to force employers to yield to their terms. Non-union workers who take the places of union workers who have gone on strike are derisively called "scabs". The boycott is a form of agreement among union laborers whereby they refuse to use or buy products made in non-union factories or by employers who resist the union and refuse to trade with merchants who handle such products. The object of the boycott of course is to injure the business of the employer to such an extent that he will be willing to deal with the union.

The employer's principal weapons of retaliation are the lockout and the blacklist. In order to forestall union activities, to penalize union members, or force the union to moderate its demands an employer may discharge all employees who are known to be members of labor unions, and may even shut down his plant altogether for a time in order to starve the unions into submission. This is known as a lockout. And in order to avoid the employment of union workers and to prevent the formation of unions among his employees, an employer may coöperate with other employers in preparing long lists of names of workers who are known to be union members or active union workers. These lists are known as blacklists, and no person whose name is on the list will be given a job by an employer who maintains a blacklist.

As a corollary of collective bargaining labor unions try to establish what is known as the closed union shop, i. e., they try to compel the employer to employ none but union workers. Many employers on the other hand strive to maintain what is known as the closed non-union shop, i. e., they refuse to employ union workers at all. In between these two extremes there is what is known as the open shop, under which the employer is free to employ both union and non-union labor, but must maintain union hours and union scales of wages for his union employees. Union workers contend that the open shop is merely a prelude to the establishment of a closed non-union shop, while employers contend that the open shop is necessary in order to do justice to the non-union worker as well as the union worker.

Because of the great power of the strong labor unions, employers have found it expedient to form associations of national scope for the purpose of combatting organized labor. Thus we have the lines

of battle drawn between the organized workers on the one hand and the organized employers on the other, each fighting for its own interest. Outside of these two hostile camps, but vitally affected by the conflict, is the great mass of professional people, salaried workers, small business men, and farmers, known collectively as the public. Until recently the attitude of the public in industrial disputes was presumed to be that of a passive, if not impartial, spectator, but it is doubtful if that attitude can be maintained much longer.

Besides the militant activities incidental to collective bargaining, labor unions perform a great many benevolent, fraternal, and educational functions. Many of them provide various kinds of insurance benefits, as death benefits, accident benefits, unemployment benefits, and sick benefits. A number of unions maintain homes for the care of aged and incapacitated members, and some pay old-age stipends to their retired members. Unions also promote many social activities, such as concerts, dances, and other entertainments. A great many unions in recent years have launched educational enterprises—classes for instruction in English, economics, and many other subjects.

Labor Problems

The paramount problem in the field of labor is how to establish industrial peace—how to end the perennial warfare between organized labor and organized capital which is so terribly expensive to labor, to capital, and to the public. Many employers believe labor unions are wholly evil and ought to be legislated out of existence. They might just as sensibly advocate turning back the tides of the sea with a wave of the hand. Organized labor is with us and has come to stay. This, however, should not blind us to the fact that there is much justice in some of the contentions advanced by the opponents of labor. Labor has not yet learned how to manage its own household. Much damage and inconvenience result to employers and to the public from jurisdictional disputes between unions, and from petty and unwise craft restrictions. It is also true, unfortunately, that there have been a number of conspicuous cases of corruption among union leaders. Indefensible as these things are, they should not lead to general condemnation of labor unions or to forgetfulness of the equally indefensible practices of employers.

But for the ruthlessness, inhumanity, and greed of certain types

of employer and the sheer stupidity of the great majority of employers in the art of handling men, it would be exceedingly difficult to organize and maintain labor unions.

Many expedients are proposed for the promotion of industrial peace. The best known of these perhaps is arbitration. Under arbitration the union and the employer agree to refer the matters in dispute to an impartial third party or to a board made up of an equal number of representatives of the union and the employer and a third party selected by these representatives. They also agree to abide by the decision of the arbitrator or the board of arbitration. Where arbitration is resorted to, it may be said in general to work fairly well, although the decisions rendered are seldom satisfactory to either the employer or the employees. But there is no way to compel the contending parties to arbitrate, and irreparable damage may result before they can be brought together in a voluntary arbitration agreement. For that reason some persons advocate the enactment of laws which would compel the contending parties in a labor dispute to arbitrate, but that idea has not met with much favor in this country. A great many employers, however, have entered into contracts with their employees whereby it is agreed that whenever a dispute shall arise regarding wages, hours of labor, and the like resort shall be had to arbitration before other measures are taken. Other schemes proposed for the furtherance of industrial peace are profit sharing, admission of employees to a share in the government of industry, and coöperation. Profit sharing may do something to allay discontent among employees, but experience has shown that it cannot effectually prevent conflicts between employers and labor unions.

The reorganization of industry so as to admit employees to a real share in the determination of industrial policies seems to offer much hope for the attainment of peaceful relations between employers and employees. A number of liberal and thoughtful employers have voluntarily placed their concerns wholly or partially under the control of councils or committees in which the employees have a fair share of the membership. Such arrangements tend to convince the employees that no action will be taken without consideration of their interests, and also to bring home to them some of the difficulties of management. Coöperation, of course, goes far beyond this. In a coöperative business the employees actually own all or a considerable part of the business, and receive dividends (if there are any) in addition to their wages. Coöperation has not as yet made much progress in this country, but the recent success of labor banks

and merchandising enterprises may be prophetic of more rapid progress along those lines in the near future.

Next to the problem of industrial peace the most acute problem of labor is how to prevent unemployment. The irregularity and uncertainty of employment is one of the main causes of distress and discontent among the working classes. Many industries are of a seasonal character and make little effort to keep their employees regularly and continuously at work, and others are so wholly dependent upon temporary business conditions that they take on a large force of employees when business is good and promptly dismiss them as soon as business conditions change. Public employment agencies have performed valuable services in assisting workers to find employment and in bringing about a better distribution of labor supply, but it must be admitted that the only solution of the unemployment problem lies in the stabilization of business conditions. And it is quite conceivable that this desired end will not be attained until the employees in all branches of commerce and industry have sufficient voice in management to compel employers to take a new and different view of the matter of expansion and retrenchment. Most employers are quite unable to resist the temptation to double or treble their labor forces in times of prosperity in order to make quick and enormous profits, and when business conditions change and the big profits are not longer possible they retrench by dismissing large numbers of their employees. From the employer's and stockholder's point of view that is good business. But from the laborer's point of view it is exploitation. It is to be hoped that the time may come when employers will strive to keep business on a more even keel and will do all in their power to prevent the sharp fluctuations which react so disastrously upon labor.

Another labor problem that looms large in the world of commerce and industry is that of increasing the efficiency of labor. Employers have all too often just reason for complaining of the inefficiency of labor. Under some circumstances, no doubt, labor is deliberately and willfully inefficient. Laborers and labor leaders sometimes frankly admit that it is their policy to do as little as possible and get as high a wage as possible. They feel that this attitude is justified by what they regard as the ruthless exploitation of labor. But it may be confidently stated that purposeful slackness is not as great a cause of inefficiency as ignorance of the most efficient methods of work and lack of training in efficient methods of work. In the skilled trades workers are taught by the old-fashioned apprentice method of instruction, which though effective is not notably pro-

gressive; and unskilled workers as a rule have no training at all. During the last twenty-five years engineers and experts in scientific management have made amazing progress in the development of new and more efficient ways of doing manual labor, and numerous employers have attempted to introduce these methods. Labor, however, has viewed scientific management with suspicion and has resisted its introduction. The craft unions quite generally have held out for the old apprentice system and for strict limitation of the number of apprentices, and the industrial unions have fought the introduction of scientific methods of work. On the whole labor has felt that scientific management is merely a new device for the exploitation of labor. Shortsighted though this view may be, it must be taken into account, and employers and the public as well must come to realize that labor will not be won over until there is a thorough readjustment of the relations between capital and labor.

Government and Labor

From earliest times certain phases of the relation between employer and employee have called for governmental regulation and control, but it is only during the last fifty years that we have come to expect government to play a decisive part in the solution of labor problems. Under the federal system of government in the United States, the duty of enacting and enforcing legislation for the assistance of labor and for the improvement of industrial conditions has fallen chiefly to the states. The national government has only indirect power to deal with industrial conditions and problems as incidental to the regulation in interstate and foreign commerce. The states have undertaken to provide legislation on a large variety of subjects pertaining to labor, the following being the most important and conspicuous: working conditions and hours of labor, compensation for industrial accidents, rates of wages, the settlement of industrial disputes, and the improvement of the legal position of the worker.

Nearly all of the states now have a large body of legislation requiring employers to provide safe, sanitary, and healthful conditions for their employees. These laws are very specific as regards provision for light, ventilation, toilet facilities, drinking water, fire escapes, and safety appliances for dangerous machinery. A special department of the state government is maintained for the enforcement of these laws, and a staff of inspectors is kept constantly in

the field to check up on employers. Nevertheless there is still much room for improvement.

Many thousands of workmen are partially or completely disabled each year on account of industrial accidents. This means not only loss of earning power, but expense for medical treatment and hospital care. The income of the average worker is not sufficient to bear this burden, and therefore any accident which incapacitates him means serious distress and destitution both for himself and his family. The old rule of law was that if the accident occurred through the fault or negligence of the employer, the injured workman was entitled to sue and recover damages; but if the employer could show that the accident was not his fault or that the workman also had been partly at fault, the workman had no right of action against the employer. And even in cases where the injured worker had a clear right to sue the employer, the costs and delays of litigation were so great as to make it hardly worth while for him to exercise his right. To correct the gross injustice to employees under this system, more than two-thirds of the states have adopted workmen's compensation laws, which require the employer to pay to each injured workman a certain sum, varying in accordance with the nature of the accident, regardless of whose fault the accident was. The employer is relieved of his liability to be sued and the workman agrees to accept the compensation provided in the law in full satisfaction of any possible claims against the employer. Some states make the compensation plan obligatory on all employers, while in other states its acceptance by employers is optional. A few states, following the example of the state of Washington, have adopted the compulsory insurance plan of compensating employees for injury. Under this plan all employers are obliged to contribute to an insurance fund administered by the state government, and from this fund compensation is made to injured employees.

The regulation of rates of wages has not been considered to be a proper function of government in this country, and has only been sustained by the courts when it could be shown to have a close relation to public health, safety, and morals. Several states have adopted minimum wage laws applying only to women and children, for in the case of women and children it is possible to convince the courts that inadequate wages contribute to the undermining of the physical vitality of the next as well as of the present generation, and also to the prevalence of immorality. With regard to the regulation of hours of labor the situation is substantially the same. A number of the states have by law fixed the maximum length of the working

day for women and children, and a few states have arbitrarily fixed the length of the working day for men in certain extra-hazardous industries in which fatigue may increase the danger of accident or constitute a menace to public safety.

In order to minimize so far as possible the evils of unemployment, a great many states have created free employment bureaus with branches in all parts of the state. These bureaus collect and publish information with regard to industrial conditions with the purpose of showing the movement of supply and demand in the labor market. They also perform direct services for employees and employers. And employee who is out of work may register with the free employment bureau and receive notice of openings in his line which come to the attention of the bureau, and an employer who wants to obtain workers may call upon the bureau to furnish or recommend men.

We are beginning to expect our government to take an active part in the settlement of industrial disputes, and many of the states have taken steps in this direction. The most common plan is the establishment of permanent boards of arbitration and conciliation. These boards do not have mandatory power. They first proceed to use their influence to bring the disputing parties together for discussion and to use their good offices to suggest terms of agreement. If this process of conciliation fails, the board may offer its services as arbitrator. The disputants are not obliged to accept this offer, but if they do, the board has power to render a binding decision. By conducting investigations, holding hearings, and publishing information with regard to industrial controversies these boards exercise a large influence upon the formation of public opinion with regard to labor disputes. In 1920 the state of Kansas passed a law creating a state industrial court, and gave this court power to assume jurisdiction over all labor disputes in public utility industries and in the food, fuel, clothing, mining, and transportation industries. The court was clothed with power to investigate, conduct hearings, decide controversies, and issue orders for the enforcement of its decisions. This law was declared unconstitutional in 1923 by the Supreme Court of the United States. Vigorous arguments against compulsory settlement of any kind are made by both employers and employees, but both may as well recognize that unless there is an enormous improvement in industrial relations within the next decade or so, public demand for compulsory settlement will be well nigh irresistible.

The legal position of labor is largely determined by state law.

In nearly all states the worker is given a favored position with reference to his claims for wages. Many of the states have passed laws requiring the payment of wages in cash and forbidding the practice of reserving of part of the wages to keep the employee from leaving without notice. The so-called mechanic's lien exists in all states, and entitles the employee who has worked on a building and has not received his wages to a first claim against the property. In addition to this labor has demanded a modification of the use of the writ of injunction in labor disputes and also exemption from the anti-trust laws. The national government, in connection with labor disputes affecting interstate commerce, and also a number of the states have partially met these demands.

CHAPTER XLI

IMMIGRATION AND AMERICANIZATION

We are in the process, here in the United States, of creating a new race of men—a race that will ultimately be as different from the other races of the world as the French are different from the British, or the British from the Russians, or the Russians from the Italians. Originally the people of this country were almost wholly of Anglo-Saxon descent, but since 1790 more than 25,000,000 people have migrated to the United States. These people have come from every quarter of the earth and represent every known race and species of human beings. They and their descendants now constitute more than half of the population of this country, and in course of time their blood will be so thoroughly intermingled with that of the native stock that the American people will constitute a new and different race with unique characteristics as to language, physique, and intellect. Will it be a superior race, capable of maintaining our preëminence among the peoples of the world; or will it be an inferior, mongrel breed, destined to early decline and decay? That question we are unable to answer, but we do know that the future quality of the American race is largely dependent upon our present policies as to immigration and Americanization.

The Causes of Immigration

A great many Americans seem to have the idea that the dominant motive of foreign immigrants in coming to the United States has been to enjoy the benefits of the free political institutions of this country, but that as a matter of fact has been a minor and more or less incidental cause of the tremendous tide of immigration which has flowed into this country during the past century. The great majority of immigrants have not left their native lands because they love America more than their own country, or because they have suffered oppression or mistreatment at the hands of their home government. They have come to America, just as the immigrant of colonial times came—to make money, to better their economic condi-

tion. In America there was a whole continent to be developed; the demand for labor at high wages was almost insatiable; and the quantity of free land and cheap land was enormous. To the European peasant and factory worker this was the promised land indeed, for it afforded an opportunity to begin life anew—to emancipate himself from the grinding poverty of the Old World. So they swarmed to America by the millions in quest of gain, just as thousands of American farmers during the past decade have migrated to Canada. They knew little of the political institutions of the United States, except that most of them had a vague idea that this was a country in which every person could do just about as he pleased. Of course there were a few streams of migration which originated in political causes. A certain part of the early German migration was of this character, and so was a certain element of the Irish migration and the Jewish migration of a later period. But these constitute a very small portion of the total volume of immigration.

The American Attitude Toward Immigration

If the foreign immigrant has been actuated by economic motives in wanting to come to the United States, we have been governed by motives of the same sort in inviting and encouraging him to come. There have doubtless been a certain number of Americans who have favored immigration on idealistic grounds, just as there have been a number of foreigners who have come to this country for purely idealistic reasons. But the number of Americans who have believed that it is the mission of this country to serve as a haven for the oppressed and downtrodden peoples of the world is infinitesimal compared with the number who have believed in immigration because they thought it was a good thing for this country. The proof of that statement is to be had in the fact that just as soon as we became convinced that immigration was not good for the country, we changed our attitude and forgot our exalted mission. But in the beginning this country was a wilderness. The need of population and man-power was limitless. To clear and till the soil of this vast continent, to work its mines, to cut its forests, and to make possible the operation of factories and other industries called for man-power far beyond the capacity of the sparse population of the country. We had to have an enormous supply of labor and we wanted to get it as cheaply as possible. This need could be met more quickly and more cheaply by the encouragement of immigration

from foreign countries than in any other way. Furthermore, we wanted our population to grow quickly, for quick growth of population meant increased opportunity for industrial and commercial development. Every shipload of immigrants meant an addition to the wealth and producing power of the United States, and so we were for free and unlimited immigration. All new and undeveloped countries are like that. It is the same in South America, Africa, and Australia today.

Ten or twenty years ago, however, conditions in this country began to change. The supply of free land and cheap land gave out, and consequently the opportunity for men to escape the limitations of birth and ill-fortune became very much more restricted. The headlong pace of our industrial and commercial development was also somewhat checked, and it became apparent that our country could no longer absorb such huge numbers of immigrants without undermining the security and prosperity of our working population. The foreigner was accustomed to low standards of living—so low that the native workman could not meet his competition. But the native worker had to face the competition of the foreigner, because it was no longer possible to "go West and grow up with the country". Organized labor then began to demand restriction of immigration as a measure of protection for labor. Gradually the general sentiment of the country, except for certain business and industrial interests, swung around to the position taken by organized labor; this reversion of sentiment having been greatly accelerated no doubt by certain religious and racial animosities which have sprung up because the great majority of the immigrants who have come in the last thirty years are so fundamentally different from the native stock and the older immigrants. With our change of opinion as to the desirability of foreign immigration from an economic standpoint has come an equally pronounced change of feeling as to the desirability of immigration from a political standpoint and a social standpoint. There is a tendency to hold the immigrant responsible for the unsavory political conditions found in our cities, and to profess a belief that the shocking slum districts of our urban centers would not exist but for the foreign element in our population.

The Extent and Character of Immigration to the United States

The first census of the United States, taken in 1790, showed that more than 90% of the population of the United States was of British origin. The largest non-British elements were the Germans in

Pennsylvania, the Dutch in New York, the Swedes in Delaware, and the French Huguenots in New England and some of the middle states. But these collectively did not amount to 10% of the total white population, and they had lived under British rule so long that they had become quite thoroughly assimilated. These conditions lasted until about 1840, roughly speaking. Then several great tidal waves of immigration set in. First came the Irish and the Germans. Between 1840 and 1900 more than 3,000,000 Irish immigrants came to this country, and the German immigration during the same period was nearly 5,000,000. Somewhat later came almost equally large streams of British and Scandinavian immigrants, Great Britain and Canada sending us over 3,500,000 immigrants before 1900 and the Scandinavian countries about the same number. Unhappy political conditions in Europe had something to do with this enormous movement of people from the Old World, but for the most part it was caused by the economic distress which resulted from crop failures and from the low wages and terrible working conditions which accompanied the introduction of the factory system in Northern Europe.

About 1890 immigration from these countries of Northern Europe began to fall off, and new and even larger tides of immigration set in from the countries of Southern and Eastern Europe, principally Italy, Austria, Hungary, Russia, and the Balkan states. After 1900 three-fourths of our total immigration came from these sources. By 1916 over 3,000,000 had come from Austria and Hungary, about 4,000,000 from Italy, and over 3,000,000 from Russia. Those coming from Austria and Hungary were not of one racial stock; they consisted of Czechs, Serbs, Slovaks, Slovenes, Magyars, Bulgars, etc. Those coming from Russia were principally Poles and Jews. In addition to these there was a large migration of Greeks, Roumanians, and other Balkan peoples. These southern peoples, too, came largely for economic reasons, although the movement was considerably accelerated by political conditions.

The new immigration brought with it many difficult problems. The British, Irish, Germans, and Scandinavians either spoke English or used a language that was akin to English; they were of a racial stock similar to the native population, and had much the same cultural background. And except for the Irish, they were mainly Protestant in religion, as was the native population. They came in such large masses that they could not be readily and quickly assimilated, but they were not so fundamentally different from the native stock as to create deep and abiding antagonisims. The im-

migration from Southern and Eastern Europe was of very different character. It was of Latin, Semitic, and Slavic rather than Teutonic stock; in languages and cultures had little in common with that of the native population, and in religion it was principally Roman Catholic, Greek Catholic, Greek Orthodox, and Hebrew. It was therefore very much more difficult for these later immigrants to be assimilated to the native population, and their presence among us has been a prolific cause of racial and religious conflict and hatred.

Old and New Immigration Policies

Until 1882 we permitted free and unrestricted immigration. In 1882 Congress responded to the growing demand for restrictive legislation by enacting a law excluding Chinese coolies, and lunatics, idiots, and paupers from all countries. From that time the restrictions have been extended and tightened until the once mighty river of immigration has been reduced to a mere trickle. The first step toward drastic restriction was taken in 1917 when Congress adopted the so-called literacy test. This law denied admission to all aliens over sixteen years of age who, though physically capable of reading, could not read English or some other language, including Hebrew and Yiddish. A few exceptions were made, but on the whole the rule was sweeping and inflexible. In 1921 this was followed by a wholesale restriction law, which provided that the number of aliens admissible in any year should not exceed three per cent. of the number of each nationality shown to be in the United States by the census of 1910. This act automatically reduced the total volume of immigration from over 1,000,000 a year to about 355,000 a year. But the demand for further restriction was so strong that in 1924 Congress enacted a law which limits the number of aliens admissible each year to a number not to exceed two per cent. of the number of each nationality shown to be in the United States by the census of 1890. This law also specifically forbids the immigration of Japanese coolies, which had not been done by previous legislation. It is estimated that this law will cut the annual immigration to about 161,000 a year. It will also increase proportionately those who may come from the countries of Northern Europe and decrease the number who may come from Southern and Eastern Europe.

In addition to these numerical and racial restrictions the immigration laws also forbid the admission of idiots, feeble-minded persons, epileptics, paupers, professional beggars, persons likely to become public charges, persons afflicted with tuberculosis or loathsome and

dangerous diseases of any sort, criminals, polygamists, anarchists, prostitutes, illiterates, and contract laborers. All Chinese, Japanese, and Hindu laborers are excluded, but provision is made for the admission of teachers, students, merchants, and government officials with their wives and families. It is also required that all aliens entering the country shall pay a small fee or "head tax" to defray the cost of administering the immigration laws. The administration of the immigration laws is in charge of the Bureau of Immigration in the Department of Labor. At each port of entry there are a commissioner or deputy commissioner and a large number of inspectors, investigators, and other officials.

Citizenship and Naturalization

There are two ways in which American citizenship may be acquired—by birth and by naturalization. All persons who are born in the United States and who at the same time are legally subject to the American government, are native-born citizens of the United States. It is also provided that children born outside of the United States, whose fathers were at the time citizens of the United States, shall be deemed citizens of the United States; but if they continue to reside abroad they must on reaching the age of majority appear before an American diplomatic or consular officer and make a declaration of intention to become American citizens and take an oath of allegiance to the United States. Children of natives born in the Philippine Islands, Porto Rico, the Virgin Islands, and the Canal Zone are not considered native-born citizens of the United States.

Foreigners may acquire American citizenship by naturalization, and there are two kinds of naturalization—collective naturalization and individual naturalization. Collective naturalization is a rare occurrence. When Texas and the Hawaiian Islands were annexed to the United States, the inhabitants of those countries were all made American citizens in a body, or were compelled to take special steps to elect not to become American citizens. Those who did not do so automatically became American citizens without any action on their part. The same thing did not happen when we acquired the Philippine Islands, Porto Rico, and the Virgin Islands, because those territories were not annexed to the United States but were merely added to the United States as colonial dependencies. Legally they belong to the United States, but are not part of the United States.

Individual naturalization is the most common process by which foreigners acquire American citizenship. To acquire citizenship in

this way an alien must be at least eighteen years of age. He cannot file an application for citizenship if he is younger than that, and in addition to that he must have resided at least a year in the state or territory in which he makes application. If he can satisfy these conditions, he may proceed. The steps he must take are: (1) Filing of application for citizenship. To do this he goes before the clerk of a court of record and makes application on a prescribed form, giving information regarding the place of his birth, his age, and the time and place of his arrival in the United States. (2) Declaration in intention or "first papers". At least two years before his admission to citizenship he must go before a court and declare on oath that it is his intention to become a citizen of the United States and to renounce allegiance to all foreign powers. (3) Petition for admission or "second papers". Not less than two nor more than seven years after his declaration of intention he must again appear in court and file a petition in his own handwriting requesting admission to citizenship. In this petition he must state that he is not a polygamist, is not opposed to organized government, intends to become a citizen, and renounces his former allegiance. He cannot present this petition unless he has resided in the United States continuously for five years since his first application. To be accepted the petition must be verified by the affidavits of two citizens. (4) Hearing and examination. Ninety days after the filing of his petition he is summoned before the court for examination. Both of his witnesses must attend this hearing. The judge asks questions for the purpose of ascertaining whether the law has been observed, and whether the applicant is qualified for citizenship, and, if satisfied, administers the oath of allegiance and orders the certificate of naturalization to be issued.

Minor children acquire naturalized citizenship through the naturalization of their father, but a wife must be naturalized separately. American women who married foreigners subsequent to 1922 do not lose their citizenship, as was formerly the case, but may elect to retain their American citizenship or to take the citizenship of their husband.

The Problem of Americanization

Our restrictive immigration policy has been adopted primarily because of the insistence of organized labor. Labor has demanded protection from unemployment, lower wages, and low standards of living, all of which are shown to result from an excessive influx of

cheap foreign labor. But we are beginning to see also that the policy of restriction must be pursued for other reasons as well. It has become increasingly apparent that we have failed to assimilate the stupendous waves of foreign peoples who have rolled in upon us, and that the United States is in danger of ceasing to be an American country. It is wise, therefore, to devote ourselves to the problem of Americanizing the millions who are already with us rather than to complicate the problem by the admission of still further millions. Authentic social and political investigations have shown that the unassimilated foreign elements of our population contribute enormously to the amount of crime, poverty, insanity, illiteracy, and political corruption in this country, and that these conditions cannot be materially improved until we improve the social and economic position of our foreigners and educate them to a better appreciation of the obligations of American citizenship and a better understanding of American institutions.

Native Americans who are disposed to find fault with the foreigner should remember that we have almost entirely ignored and neglected the problem of Americanization. We have left the foreigner almost wholly to his own devices. He has had to learn English as best he could, and few of us have cared whether he could or not. He has had to learn about American government from contact with the ward politician and the policeman. He has been exploited, defrauded, and abused, and we have done little to protect him. Under these circumstances it is but natural that aliens should tend to collect in colonies in the big cities, where they are not obliged to use English and where they have the satisfaction of living among people of their own kind. How can they be expected to learn anything about American institutions or to care anything about American citizenship? About the only aggressive and constructive Americanization work that has been done, has been the work of the public schools and they deal only with the children of immigrants. Not only did we offer no incentive to the immigrant to become an American citizen and provide no assistance for him, but we allowed laxness, frauds, and abuses to creep into the administration of naturalization laws, with the result that many thousands of foreigners have been admitted to citizenship without a semblance of fitness for its duties and responsibilities.

Since the creation of the Bureau of Naturalization in 1906 much progress has been made and most of the gross abuses have been eliminated, but there is still much to be done. The standards for admission to citizenship must be raised and the examinations for

admission must be made more searching and intelligent. But more important even than that is the necessity of adequate provision for night schools and citizenship classes, in which the foreigner may receive the instruction essential to intelligent citizenship. In addition to this there is need for unremitting effort to improve the conditions under which the foreigner must live and work, so that he may attain higher standards of living and a feeling of loyalty and attachment to American institutions.

CHAPTER XLII

PUBLIC HEALTH

The annual toll of disease in this country is appalling. It is estimated that one worker out of three is idle all the time on account of sickness. More than 500,000 people in this country are victims of tuberculosis, and about half that number die each year. Pneumonia claims about the same number. Thousands die of typhoid fever, influenza, diphtheria, cancer and scores of other diseases. Many more survive the attack of disease, but endure great suffering and discomfort and are temporarily or permanently incapacitated. And the cost of disease is as great in money as it is in suffering and death. The expense of care and treatment for the sick, and their loss of earning power on account of sickness aggregate hundreds of millions of dollars yearly. The happiness of the people, their comfort, their earning power, their vitality, and indeed the future of the race are all bound up in the question of health. That is why the problem is one of our most important public questions.

Why Public Control is Necessary

It is not so many years ago that disease was regarded as an unpreventable act of fate, which must be endured when it came but about which there was little to be done. But during the last fifty years science has made amazing progress in discovering the causes of disease and devising effective methods of treatment. We now know that many of the great pestilential diseases which in the past have carried off millions of people are almost wholly preventable, and that many which we have not learned to prevent can be kept in control by proper methods of treatment. This has brought a great change in the public attitude toward disease. Formerly it was not known that there was any connection between filth and disease, but it is now known that filth of all kinds supplies a splendid breeding place for dangerous germs and bacteria of many kinds; formerly we did not understand the possibilities of the transmission of disease by insects and animals, such as flies, lice, mosquitos, rats, and

mice, but now we know that such insects and animals are almost habitual carriers of disease; formerly we did not realize that the contamination of food, water, and milk with various kinds of bacteria and germs is a prolific cause of disease, but now we know that certain diseases are almost always transmitted in this way.

The light thrown upon the causes of disease by the researches of scientists during the last half-century has enabled us to perceive that by taking proper precautions we are able to prevent many diseases altogether and to prevent the terrible ravages of other diseases. But how are such precautions to be taken? By each individual on his own responsibility? With certain diseases it is no protection to a person to take every known measure of precaution unless every one else is doing the same, and with certain other diseases it is not possible for one individual or any number of individuals on their own initiative to take the necessary steps for prevention. Furthermore the average person has not the knowledge and the ability to combat disease successfully, even if it were scientifically possible for him to do so. It is obvious, therefore, that the prevention and control of disease calls for public action.

The Police Power and Public Health

The police power, as has been pointed out before, is the power whereby government is able to interfere with individual freedom in order to promote certain desirable public ends. We have noticed in this country that the exercise of the police power is severely restricted by the National Constitution and the state constitutions as well. But when it comes to public health, the courts have been exceedingly liberal in interpreting these constitutional restrictions. In fact it may be said that the tendency is to reduce individual liberty to the narrowest possible limits and to give the government sweeping and arbitrary power. There is no individual right to property, contract, or personal conduct that will be allowed to stand between the community and the protection and promotion of health. If the object is to promote public health, and the procedure is reasonably adapted to that end, the government may destroy your property, deprive you of your liberty, and regulate your conduct down to the minutest details, and you have no legal right to resist.

The Activity of Government in the Promotion of Public Health

Almost the first concern of government in the field of public health is the prevention and control of epidemic dieases. The two

commonest measures in dealing with such diseases are quarantine and vaccination. By quarantine we mean the isolation of persons, either in their own homes or in public institutions so as to prevent all contact with the outside world until the danger of contagion is past. The laws give the public health officials large discretion in establishing quarantine for certain diseases, and prescribe severe penalties for violation of quarantine. Practicing physicians are required to report these communicable diseases promptly to the health officials and to coöperate in the establishment and maintenance of the quarantine. Vaccination or innoculation is practiced mainly in connection with smallpox, but is coming into use for other diseases also. The chief object of vaccination is to prevent the spread of disease among well persons who may be exposed to contagious or communicable diseases. This is not the place to discuss the scientific aspects of vaccination, although it may be observed that the subject is in some respects controversial. Nevertheless, the value of vaccination has come to be so generally accepted that the law in all states gives the health authorities extensive and arbitrary power to compel people to be vaccinated against their will.

As an auxiliary measure in the protection and promotion of public health, there is nothing more important than sanitation. This refers not only to sewerage, garbage disposal, the cleaning of streets, etc., all of which are now recognized as indispensable functions of government, but also to the care of private premises of all kinds. There is no longer any inherent and inalienable right to be filthy. The health authorities have the power to compel business men and householders to keep their premises in such condition as not to constitute a nuisance and a menace to the health of the community.

To prevent the spread of disease through contaminated water, milk, and food, the health authorities are armed with enormous powers. The water-supply must be regularly tested and approved by the health authorities. People are forbidden to use private wells and springs. Care is taken to prevent the contamination of the water-supply at the source. In order to secure an ample supply of pure water most cities have been obliged to construct and operate their own systems of water-supply. To protect the milk-supply cities forbid the sale of milk without a license, and compel producers and distributors to comply with public regulations. Dairy herds must be properly inspected and certified; barns and other buildings must be kept in a sanitary condition; all cans, containers, and equipment must be thoroughly cleaned and disinfected; employees must be ex-

amined and those who are afflicted with communicable diseases may not be retained. The protection of the food supply is accomplished in somewhat the same way. Slaughter-houses and meat-packing establishments are subject to public inspection and control, and the carcasses of diseased animals may not be used or sold; sanitary regulations for the handling and packing of meat products must be observed. Bakeries, candy factories, ice-cream factories, and other businesses having to do with the preparation of food are subject to similar regulation and control. Retail stores and restaurants are also subjected to increasing control in respect to their methods of handling food and the employment of persons afflicted with dangerous diseases.

It has also been found necessary to regulate certain trades and professions which have a bearing upon the matter of public health. The practice of medicine is everywhere under governmental control. The same is true of dentistry, pharmacy, osteopathy, nursing, and some others. Persons who are not qualified by study and experience are not permitted to engage in these callings. The licensing of plumbers and barbers has also been undertaken as a measure of protecting public health.

Another responsibility of government in the promotion of public health is the regulation of conditions in factories, stores, and other business establishments so as to protect the health of the workers and safeguard them against accident. This has already been considered in a preceding chapter.

One of the biggest tasks of government is to provide the facilities required for the struggle against disease. We have almost reached the point where it is impossible to rely upon private philanthropy to provide hospitals, sanatoriums, laboratories, clinics, and other institutions needed for the work of research and healing. Our cities and states are now spending millions of dollars for the establishment and operation of such institutions, and many believe that we have as yet only made a beginning.

Among the newer activities for the furtherance of public health is medical inspection in the public schools. The object of this is not only to prevent disease among children, but also to teach them and their parents how to care for themselves and how to avoid sickness. For the children whose parents have not the means to provide proper medical service, free treatment is available. Closely related to this is the public health nursing service, which has been established in a number of cities. This is a service which provides for visiting nurses to go from home to home, especially among the poorer classes, and

give advice and assistance as to methods of caring for the sick, and also to give instruction in hygiene.

Not the least important of the public health work of government is that of educating the people to pursue more healthful modes of life and to take proper precautions to prevent and avoid disease. This is being done by the publication and distribution of pamphlets and documents of all sorts, by publicity in the magazines and newspapers, by the showing of educational films in the motion-picture theaters, by lectures and exhibits, and so forth.

How Public Health Work Is Done

The public health work of the national government is in charge of the Bureau of Public Health Service in the Treasury Department. This bureau enforces the national quarantine laws, which have to do almost entirely with the inspection of ships arriving from foreign ports and the quarantining of those passengers or members of the crew who are found to be suffering from dangerous or communicable diseases. It also has charge of the administration of the twenty-two marine hospitals which are maintained by the national government for the care of sick and disabled seamen. Aside from these duties the work of the bureau is almost entirely confined to research, investigation, and the dissemination of information.

Each state has a state health board or department. It is usually organized as a board made up wholly or almost wholly of physicians. There is usually a permanent secretary who acts as executive officer of the board. The duties of the board are: To administer and enforce all state laws for the suppression of epidemics; to make rules and regulations to supplement these laws; to investigate diseases and their causes; to collect statistics regarding births, deaths, and diseases, and to coöperate with and sometimes to supervise the local health authorities. In addition to the state board of health there is usually a state chemist, a state bacteriologist, and a state dairy and food commissioner. Sometimes these are under the control of the board of health and sometimes not.

Each city has its own board of health or health commissioner, and the same thing is true of the great majority of counties. The work of city health authorities is to enforce within the city both the law of the state and the municipal ordinances amplifying and supplementing the law of the state. The municipal health authorities are generally given full power to take the steps which may in their judgment be necessary for the suppression of epidemics and the abolition of

insanitary conditions. Outside of the boundaries of the city, however, they have no power. The county authorities act in the rural sections, not within the limits of incorporated cities. There are also in each city and county other officials who have to do with public health matters.

It is an unfortunate fact that the relationship of national, state, and local health authorities is not as close and harmonious as it ought to be. There is often much doubt as to which has authority to act and as to the extent of the authority when action is taken, and there is also a good deal of conflict and dissension.

CHAPTER XLIII

THE POOR AND UNFORTUNATE

I. POVERTY

It is estimated that about five per cent. of the people of this country are more or less continuously dependent upon charity, and that more than $500,000,000 are each year devoted to the relief of poverty. This enormous burden has to be carried by the remainder of the people, either in the form of taxation or of voluntary gifts for charitable purposes. But think also of the endless misery and suffering which poverty brings to its victims—insufficient and unwholesome food, susceptibility to disease, crowded and insanitary living quarters, improper clothing, lack of opportunity for education and other advantages. Is it any wonder, then, that poverty is counted among the most potent cause of discontent, crime, and extreme radicalism?

The Causes of Poverty

There is no single cause of poverty, and there are very few cases of poverty which may not be ascribed to a combination of several causes. One of the most prolific causes of poverty is unemployment. It is claimed that unemployment is a factor in between fifty and eighty per cent. of all cases of poverty. Unemployment may arise in many different ways, as through strikes, lockouts, industrial accidents, or business depression. Very closely related to unemployment as a cause of poverty is the inadequacy of the wage rates paid in many industries. This may be due to the beating down of wages by the importation of cheap foreign labor, or to oversupply of labor in certain industries owing to improper distribution of labor-supply throughout the country. Sickness is also a leading factor in many cases of poverty. It is estimated that it figures as one of the principal causes in about one-third of the total number of cases. In-

ability to work on account of old age is also a frequent cause of poverty.

Ignorance and illiteracy are common causes of poverty. There are many people so benighted that they are almost helpless. They do not know how to do anything but the crudest sort of work, and they do not know how to better their condition. Many others are not mentally equipped to take a place in the workaday world, even though they have opportunities for education. They are feeble-minded or otherwise deficient mentally, and cannot keep up with the pace of modern life. Then there are many who are brought to poverty through gambling, drunkenness, and other forms of vice and immorality. And finally there are many cases of poverty which are caused by laziness, thriftlessness, and general degeneracy. It is said that this is a factor in from ten to fifteen per cent. of the cases of poverty.

The Treatment of Poverty

Poverty has always been recognized as a social evil and an undesirable condition but the modern conception of the way in which poverty should be treated is very different from that which prevailed until forty or fifty years ago. The old idea was that the relief of poverty was a pious duty to be performed by individuals, by the church, and by the state in cases which could not be dealt with by personal or religious charity. The giving of alms and the extending of charitable help were practiced indiscriminately and with little or no effort to cure the conditions giving rise to poverty, and consequently they often did as much harm as good. The modern idea is that charitable relief should only be used to meet urgent needs, and that the main effort should be directed to the removal of the causes of poverty, the prevention of poverty, and to scientific and specialized treatment for each case so as to put poverty-stricken people on their feet and enable them to make their own way in the future. The new idea has not yet wholly superseded the old, and many good people feel that it is heartless and inhumane though efficient.

Private Agencies Dealing with the Poverty Problem

The treatment of poverty is left very largely in the hands of private organizations. There are large numbers of these dealing with almost every aspect of the problem of poverty. There are settlement houses, homes for the aged, homes for orphans, charity hospitals, societies for the assistance of immigrants, for the assistance of work-

ing girls, for the assistance of convicts, employment bureaus, and institutions for this and that different purpose almost without end. Many of these are operated and maintained by religious denominations and fraternal orders, while others are under the control and direction of charitable organizations formed for some special purpose and without any denominational or fraternal connections. These organizations very frequently compete with one another in the raising of money and the administration of relief. There is often a great amount of duplication of work and little or no coöperation in the treatment of cases. When conditions such as these exist there is bound to be inefficiency, extravagance, and unnecessary work in raising and disbursing funds. To avoid these evils the private charitable institutions in many communities have formed federations or associations through which they coöperate in the performance of their respective functions. In a great many communities also the raising of money for charitable purposes is done through what is called a community fund. Each institution abandons its right to solicit funds, and all coöperate in an effort to raise at one time funds sufficient to meet the needs of all. This is known as the community fund, and is generally administered by a board representing the various organizations and is apportioned among them according to their needs as shown to the board.

A great many private charitable institutions receive support from the public treasury. Under some circumstances this may be justifiable, but it has generally resulted in a raid upon public funds. Political influence is used to induce the state legislature or the city council to make an appropriation, and when once an institution receives a public benefaction it comes back year after year with requests for larger sums. And though they are willing and anxious to obtain funds from the public treasury, these institutions are seldom willing to submit to public inspection and control. They want to get as much money as they can from the city or state, and then spend it as they please. It is estimated that public funds amounting to approximately $100,000,000 a year are practically wasted by private institutions.

Governmental Activities for Relief of Poverty

Two kinds of governmental activity in the relief of poverty are almost universal in this country, namely, outdoor relief and institutional relief. Outdoor relief consists of gifts of cash and supplies to needy persons. Nearly all counties, towns, and cities make some

provision for outdoor relief, and the funds appropriated for that purpose are generally administered through special officials. There has been a great deal of adverse criticism of the administration of outdoor relief. It is said that outdoor relief tends to breed paupers rather than to cure poverty, and also that its administration is attended with favoritism and extravagance. Nevertheless, it is conceded that there are some cases in which outdoor relief is quite necessary, and it is therefore important that it should be administered by trained social workers.

Institutional relief consists of the care of indigent persons in almshouses, poorhouses, asylums, and so on. The provision and operation of such institutions has been the task primarily of counties and cities; poverty being regarded as a local matter. But within the last twenty years there has been a notable tendency to bring all of these local institutions under the control and supervision of a state board or department, the object being to improve the standards of management, prevent the waste of funds, and regulate the admission of inmates. Such state boards also have supervision over private institutions receiving state support. A great many of the states have also established various state charitable institutions to do work that the local institutions are unable to do.

A great many states are now entering upon new fields of endeavor for the amelioration of poverty. It was pointed out in a preceding chapter that more than two-thirds of the states now have workmen's compensation laws providing for the compensation of injured workmen. These laws have been of great service in reducing poverty. A number of states now have mothers' pension laws, which provide financial assistance for widowed mothers with dependent children. Three states have now enacted laws providing for old age pensions, and many other states are considering legislation of the same kind. There is also a movement on foot for state sickness insurance, but as yet no state has adopted such a law.

The Solution of the Problem of Poverty

There is no sovereign remedy for poverty. The work that is now being done by both public and private agencies in extending relief and assistance to those caught in the grip of poverty is very valuable, but we should not close our eyes to the fact that permanent alleviation of poverty can only come through profound changes in our economic and social life. There must be a fairer distribution of

wealth, and a new type of management in industry that will prevent the sharp fluctuation from extreme prosperity to extreme depression. More adequate provision must be made for education, especially vocational education which gives people definite training to enable them to earn a livelihood. All conditions which affect the moral standards and personal habits of people must be improved. This means that the people must have better homes to live in, more wholesome surroundings to work in, better advantages in the way of wholesome recreation and clean entertainment, and more incentive to work and save and get ahead. Every effort must be made also to provide proper care and training for those unfortunate persons who are mentally or psychologically below par, and who need special assistance before they can become useful and self-supporting members of society.

II. THE UNFORTUNATE

There are certain classes of people for whom special treatment and care must be provided, because they suffer from physical or mental handicaps which place them at a great disadvantge. In this group belong the blind, the deaf, the feeble-minded, and the insane.

The Blind

Blindness is one of the greatest misfortunes that can come to a human being, but it no longer need be the great tragedy that it formerly was. It is now possible to educate the blind so that they may enjoy a useful and happy life. They can be taught to read and write, to perform music, to play games, and to do many kinds of useful and valuable work. All of our states now maintain institutions for the education of the blind, and there are a number of private institutions devoted to the same object. It is important that these institutions should be maintained in such a way as to be open to blind persons at a minimum cost, and, in the case of those who cannot afford to pay, without any charges at all.

The Deaf

While deafness is not considered as great an affliction as blindness, it is a severe handicap. As much can be done for the deaf by education and training as for the blind. They can be equipped for almost any occupation. They can be taught to speak, and to do lip reading so successfully that it is sometimes difficult to detect their deafness. Institutions for the education of the deaf are maintained by

all of the states, and there are many well-supported private institutions. Gallaudet College at Washington, D. C., is an institution of higher education for the deaf maintained by the national government.

The Feeble-Minded

The problem of dealing with the feeble-minded is much more difficult than that of assisting the blind and the deaf. There are three types of feeble-minded persons—idiots, imbeciles, and morons. An idiot is a person whose body develops, but whose mind remains like that of a one-year-old or two-year-old baby. An imbecile is one whose body develops, but whose mind does not develop beyond that of a three-year-old or seven-year-old child. Morons are persons having normal physical development, but have the mentality of children of eight or twelve years. Idiots and many imbeciles are almost helpless, and little can be done for them except to care for their physical wants. Most states and many cities and counties now have institutions for the care of the feeble-minded, in which idiots and imbeciles may be segregated and cared for.

High-grade imbeciles and morons are much harder to deal with. Most of them can be taught to care for themselves and to do certain kinds of useful work. Being physically normal, it is often difficult to detect their mental deficiency, and great numbers of them marry and reproduce their kind. Not only that; many of them have pronounced criminal tendencies, and all of them are deficient in ability to judge between right and wrong. It is stated by qualified authorities that fully half of our criminals belong to this class; that three-fourths of the inmates of reform schools are mental defectives; and that a very high proportion of paupers, drunkards, and drug addicts are feeble-minded. It is claimed that there are at present nearly 700,000 persons of less than normal mental development in this country. These people are not hopeless derelicts. They can be educated and trained to do useful work, but they must be under constant supervision and control in order to achieve anything, and in order to prevent them from leading lives of crime and immorality. The most successful mode of treatment is to keep them in institutions where they can be taught to work and can be occupied with simple and useful tasks, and most important of all where they can be segregated and prevented from producing feeble-minded offspring. At the present time we do not have institutional facilities to care for this vast army of mental unfortunates. It is doubtful if one-

tenth of them are receiving proper treatment. Most of the states have established institutions for the feeble-minded, but they are not adequately supported and are capable of caring for only a small part of those who ought to be within their jurisdiction. The public attitude toward feeble-mindedness has been one of indifference. The people have been reluctant to have public money spent for the care of such persons, and a great many people will do everything possible to prevent the commitment of feeble-minded members of their own family to public institutions. During the last few years much progress has been made in providing special instruction of the feeble-minded in the public schools.

The Insane

The insane differ from the feeble-minded in that their trouble is not caused by arrested development, but by diseases of the brain. By proper treatment many of these mental diseases may be cured, but there are thousands who are hopelessly incurable. Nearly all insane persons are unfit to be associated with normal persons, and many of them are dangerous. Furthermore, the type of treatment necessary is not such as can be supplied by the ordinary medical practitioner or administered in the home or ordinary hospital. The only scientific way to deal with the insane is to segregate them in institutions where they may receive the special treatment they need and where they may lead the type of life that is essential to their recovery, if they are curable, and to their comfort and happiness if they are incurable. All of our states and many counties and cities have established hospitals and asylums for the care of the insane. Most of these are well managed and are doing most valuable work. Unfortunately, however, there are so many insane persons that these institutions are as a rule overcrowded and handicapped. Oftentimes they are obliged to release patients before they are fully cured in order to make room for more serious cases, and sometimes they are obliged to refuse to take all but the more desperate cases of insanity.

CHAPTER XLIV

EDUCATION

We frequently say that one of the great virtues of democracy is that it affords equality of opportunity to all. By this we do not mean that all persons can attain the same degree of success or the same amount of material wealth, but that every one has a chance to succeed in proportion to his ability. Upon reflection, however, we know that this cannot be true unless all people have the same opportunity to discover, develop, and use their talents and abilities. The educated person today has as much advantage over the uneducated person as the noble had over the serf or peasant in former times. Therefore unless education is free and open to all, to the children of the very poorest people as well as children of the wealthy, we cannot say that there is equality of opportunity. For this reason it is the duty of every democratic government to provide a system of free education, including everything from the lowest grade of the common schools to the university.

Education is an important matter in a democracy for other reasons too. The success of democratic government in the end depends upon the intelligence of the general mass of citizens, and a system of public education affords an opportunity to teach each individual the duties, obligations, and opportunities of citizenship. Through education, also, it is possible to prepare young people for those vocations which are essential to the development and proper utilization of the resources of the country. And through education it is possible to implant in the minds of young people ideals and principles which will make the nation great and the people happy and contented.

Development of Public Education in the United States

The beginnings of the public school system of this country are to be found in the acts of several of the colonial legislatures providing for the establishment of schools to be supported in whole or in part by taxation in every township or county. These schools were only elementary schools, teaching the common branches such as read-

ing, writing, and arithmetic. It was not at that time thought to be the business of the public to support high schools, academies, and colleges. Later the demand for public education grew, and all of the states provided for free high schools; and by the time the states west of the Alleghenies were settled there was a strong demand for publicly supported colleges and universities. We now have in the public schools of this land over 20,000,000 pupils and something like 800,000 teachers, and in the colleges and universities the enrollment and the instructional staffs are proportionately large.

State School Systems

Education is a function which belongs primarily to the states. Every state has made extensive and detailed provision in its constitution and laws for the organization, support, and management of public schools. The smallest unit of school government is what in most states is called the school district. There are hundreds and thousands of these districts in each state. Sometimes they are small rural areas with only one school house and one teacher; sometimes they may embrace a whole township with several schools and a number of teachers; and sometimes they are coterminous with the boundaries of cities and include dozens of schools and thousands of teachers. The governing authority of each school district is a school board, board of education, or school committee, the members of which are either elected by popular vote or appointed by some town or city official. This board appoints teachers and principals, locates and erects school buildings, selects text-books, and to a certain extent regulates the course of study. Sometimes also it has the power to levy taxes for school purposes. In the exercise of all these functions it is subject to the general provisions of the state law on education. These school districts are subject to the supervision of the county superintendent of schools in some matters, and in other matters they are under the direct control of the state superintendent of public instruction. School districts as a rule do not provide for instruction beyond the high school, and a great many do not have high schools.

The institutions of higher education maintained by the states include generally one or more normal schools, a state university, a state agricultural college, and occasionally a school of mines. These institutions are ordinarily governed each by a separate board of trustees or regents appointed by the governor of the state. The purpose of the normal schools is to train teachers for the elementary

schools. The state university provides for general literary and scientific education and also for professional training in a number of fields. In many states the state college of agriculture is part of the state university, but several of the western states have separate agricultural colleges. The same thing is true of mining colleges.

Educational Work of the National Government

The only direct educational activity of the national government is that involved in the conduct of the Military Academy at West Point, the Naval Academy at Annapolis, the Army War College at Washington, the Naval War College at Newport, the Indian schools, and the schools in Alaska and the insular possessions. But the indirect educational activity of the national government is of great importance. The Bureau of Education in the Department of the Interior has a large staff of specialists engaged in educational research of every sort, and devotes millions of dollars to the collection of educational information and the publication and dissemination of pamphlets and documents on educational subjects. In addition to this the national government has done a great deal to encourage the states to take up new educational projects and has given them material assistance in numerous ways. Congress has made generous grants of public lands to the states for educational purposes; large appropriations are made from the national treasury to subsidize agricultural, mechanical, and military education in the states, and since 1917 Congress under the Smith-Hughes act has been devoting several million dollars a year to the fostering of vocational education in the public schools. Under the terms of the last-mentioned act certain sums are granted to each state for the payment of salaries of teachers of vocational subjects on condition that the state appropriate similar sums for the same purpose.

Educational Problems

Splendid as our system of public education is, there are still many great problems to be solved. To the amazement of many people it has been discovered that there are millions of illiterate persons in this country. Conservative military authorities estimated that 24.9% of the men drafted into the army in 1917–1918 could not read or write. Many of these were Negroes and many were of foreign extraction, but too large a number were of native American stock from states in which insufficient attention has been given to education. Regard-

less of race or nativity, however, illiteracy must be wiped out. It is a menace to our institutions. School attendance up to the age of twelve or fourteen years is in most states made compulsory for all children, but unfortunately school attendance laws are not always efficiently enforced. And if the compulsory education laws were rigidly enforced, in some states there would not be enough school buildings and teachers to accommodate the pupils.

Another serious problem has to do with the teacher. Schools are made or ruined by the teachers, and good teachers are far more important than buildings, books, or any form of physical equipment. But we have seemingly done everything possible to make the teaching profession unattractive to persons of initiative, ability, and inspiring personality. On the average teachers are not as well paid as ordinary laborers, and yet one must spend years in preparation to become a teacher. Moreover, we have allowed politics to creep into the administration of our schools to such an extent that the position of the teacher who is unwilling to play politics is very precarious and uncertain. In addition to the low compensation and the uncertainty of tenure the teaching profession is made even more unattractive by the fact that we do not respect and honor the teacher as we do members of other learned professions. Is it any wonder, then, that persons of ambition and ability are disinclined to take up teaching as a career? Teaching has little to offer as compared with law, medicine, or engineering. These conditions must be remedied soon if we are to save our public schools from serious decline.

Another problem of paramount importance is how to adjust our educational system to the needs of modern life. The common branches of study—reading, writing, arithmetic, geography, etc.—are no less important than formerly, but we are coming to realize that these alone do not fit the average boy or girl to succeed in life. The great majority of boys and girls do not get beyond the sixth or eighth grade when they must stop school and go to work. With just the common subjects when their schooling ends, they are not much better equipped for life than the ordinary laborer. What they need is special training for some particular kind of work—in other words, vocational education. Great progress has been made in most of the larger cities in introducing vocational subjects in the schools, but in the small cities and rural sections only a bare beginning has been made. The time will doubtless come when the teaching of agriculture, domestic science, and mechanical arts will be as universal as the teaching of the old common branches. Along with this development there is also need for the extension of educa-

tional opportunities to those who have been obliged to leave school and go to work at an early age. To meet this need a number of cities have established evening schools and part-time schools, which make it possible for ambitious persons desiring to continue their education to attend school without giving up their work. Developments of somewhat the same sort are much needed in the small towns and country districts as well. Then there is an enormous need for what may be called adult education, i. e., for teaching persons who have passed the school age. It used to be thought that when a person had reached the age of twenty or twenty-five he was too old for education. We now know that with instruction of the right sort people of mature age can derive great benefit from school attendance, and from special courses of lectures and reading. Much is being done in this field by some of the state universities and agricultural colleges, and there is a great opportunity for high schools and elementary schools in the same field.

CHAPTER XLV

NATIONAL DEFENSE

Preparation for national defense is necessary for the same reason that we place locks on our doors and windows and keep firearms in our homes. We could probably leave our houses open and defenseless 364 days in the year without molestation, but on the 365th day thieves and marauders might descend upon us; and we never know in advance which particular day that is going to be. So it is with nations. If there were no such thing as war, nations would not need to arm. But war is a danger which may overtake us at any time, and in a very unexpected way. It is difficult to believe that any sane and intelligent people would deliberately choose war in preference to peace, but it is nevertheless true that not even the most highly civilized and peaceful nations have found it possible to keep out of situations which make war unavoidable. Since, therefore, we may at any time be drawn into war, even though we may prefer peace, it is the part of wisdom for us to be prepared for any eventualities which may arise.

The Basis of Preparation for War

It is not necessary for most countries to maintain such a state of preparedness for war that they can throw millions of men and hundreds of ships into action on a moment's notice, but it does seem necessary to have military and naval forces of such character that they can rapidly be expanded when emergencies arise. Just what should be the size and character of these permanent military and naval forces will depend in large part upon a nation's geographical and political situation and upon its foreign policy. If a country is surrounded by actual or potential enemies, if boundaries are exposed and difficult to defend, if it has no strong allies or friends, and if it is pursuing a foreign policy that is bound to lead it into conflict with other powers, it must make elaborate preparations for defense. But if it is isolated geographically, has boundaries that are easily defended, has no entangling alliances, and is pursuing an

unaggressive foreign policy, it needs to make very little preparation for war.

The United States is fortunate in being in the latter position. There are no other strong powers in the Western Hemisphere, and with two great oceans separating us from Europe and Asia, we are not in imminent danger of attack from any source. There is only one country in the world which is in position to launch an attack upon us with any chance of success, and that is Great Britain. But Great Britain would lose more than she could possibly gain by attacking us, because she could not hope to subdue us and she would in the end lose Canada and all her West Indian possessions. We need not, therefore, fear attack from Great Britain. In addition to this geographical advantage we have the further advantage of being free of all entangling alliances which might take us into war in support of an allied power. In all the controversies which may arise among other countries we are free to do as we please. This leaves only one possibility of our being drawn into a foreign war, and that is through our foreign policy. We have a colonial empire in the Pacific Ocean and in the Caribbean Sea, and these insular possessions do not occupy the same fortunate geographic position as the continental United States. The Philippine Islands, the Hawaiian Islands, Porto Rico, the Virgin Islands, and the Canal Zone are quite open to attack, and to be sure of holding them we must be amply prepared to defend them. But the danger of trouble which might involve our possessions in the Pacific has apparently been very much lessened by the Four-Power Treaty which we made in 1922 with Great Britain, France, and Japan, whereby the four powers mutually guarantee to one another undisturbed possession of their respective territories in the Pacific. Our Caribbean possessions and our relations with Latin America mean a great deal to us. By our Monroe Doctrine we have warned the rest of the world that we will not tolerate any interference with the countries of Latin America which might lead to their subjection to a European or Asiatic power, and that we will not permit any further colonization by non-American powers in this hemisphere. The right of one country to dictate the policy of a whole hemisphere is not recognized by international law, and we must therefore be prepared to back up our position by force. As to Europe we have no policy, and seemingly no desire to have any policy with regard to the affairs of the European powers, except as they affect our interests in Asia and Latin America.

It will be seen, therefore, that the American geographic and polit-

ical situation, and the American foreign policy call for a very special type of defense organization. We have almost no need for a standing army, for we are in practically no danger of attack by land and are unlikely to want to send large military forces overseas on short notice. But we do need strong coast defenses and a large navy. How large our navy should be depends upon the size of the navies maintained by other powers. To defend our extensive coast line and our outlying possessions and to maintain the Monroe Doctrine requires a navy second to none. This fact was recognized in the Naval Disarmament Treaty entered into in 1922 with Great Britain, France, Japan, Italy, and one or two smaller powers. We were allowed to maintain a navy equal in size to that of Great Britain, while all others were obliged to accept a smaller ratio. For the same reason that we must have a large navy, we should also rank second to none in airplane and submarine equipment, though as a matter of fact we do not.

The Army

The size and character of the miltary forces of the United States are determined by act of Congress. In this way the various branches of the service are established, the number of divisions and units in each branch, the number of officers and enlisted men, the terms of service, and the general rules for the government of the service. The President is commander-in-chief of the army, but exercises his functions through the Department of War. The Secretary of War is almost always a civilian and does not pretend to assume charge of the forces in the field. He administers the War Department and exercises general supervision over the commanding officers of the army, who are appointed by the President and Senate.

Under the present law the military forces of the United States are organized in three branches: (1) the regular army, (2) the national guard, and (3) the organized reserves. The regular army is a permanent establishment of professional soldiers. It may be recruited in time of peace to a strength of 280,000 enlisted men. The present strength is about 125,000. The members of this force are recruited by voluntary enlistment for terms of one or three years. The national guard is organized in the various states under the command of the governor and locally selected officers, but subject to federal supervision and receiving compensation from the national treasury. The national guard is recruited by voluntary enlistment for a term of three years. The members are civilians who drill

regularly and have maneuvers at stated times. The national guard is subject to call for national service at any time in the same way as the regular army. The organized reserves consist of officers and men (chiefly those who saw service in the late war) whose names are placed on reserve lists and who are subject to call in the event of war. They do not engage in regular military training but go to camp once a year for a short period of intensive military work.

The Navy

The navy like the army is created and organized by act of Congress. Congress fixes the total number of ships, the number of each type, the number of officers and enlisted men, the number and location of naval bases, and the general rules for the government of the service. The President is commander-in-chief of the navy, but exercises his power through the Department of Navy. The Secretary of Navy, like the Secretary of War, is commonly a civilian who devotes himself to the administration of the department and general supervision of the commanding officers. Under the Naval Disarmament Treaty of 1922 the British navy and the American navy may not exceed 550,000 tons each. The Japanese navy is restricted to 325,000 tons, and the French and Italian navies to still smaller figures. These restrictions apply to battleships and battle cruisers, but not to light auxiliary vessels, seaplanes, and submarines.

Connected with the navy is the Marine Corps. The marines are sea soldiers. That is to say, they are used in connection with the navy for land fighting and shore duty, but have nothing to do with the operation of naval vessels.

The Controversy Over the Air Service

During the past few years there has been a controversy of ever-increasing vehemence as to the relation of the air service to the army and navy. At present the air service is divided between the army and the navy, each having its distinct flying corps and separate equipment. Experienced airmen contend that this is a very unsound arrangement and advocate the establishment of a unified air service independent of the two older arms of national defense. In favor of this it is contended that the present arrangement places air fighters under the command of officers of no experience in

aërial matters; that it prevents the proper development of the air service; and that it causes enormous waste and duplication. On the other side of the controversy the contentions are that an independent air service would make it difficult to secure proper coördination between land, sea and air forces; that the airplane is still in the experimental stages and that its fighting efficiency is overestimated by airmen; and that the air service could not be operated independently of the army and navy.

The Changing Character of Warfare

We thought the supreme horror of war was reached in the fateful years between 1914 and 1918, but the years since 1918 have witnessed such amazing progress in the science of destruction that we now know that the next great war will be terrible beyond any power of imagination or description. Chemical warfare, particularly the use of poisonous gases, had not passed the stage of infancy at the close of the late war. In the closing weeks of the war gases far more deadly than any used in the war were perfected, and chemical research since that time has still further developed the possibilities of gas warfare. It is now announced that it will be possible to wipe out a city, a whole country side, or a complete army with a few gas bombs. The airplane and the seaplane also have been greatly developed since the end of the war, and military experts say that the next war will be fought very largely with airplanes using poisonous gases and tremendously destructive bombs. It is said that there is no fleet and no fortification that can withstand the sort of attack that can now be delivered from the air. It is also probable that the submarine will be a much more terrible instrument in future wars than it was in the recent war.

Not only are we improving the technique of destruction; we are also changing the character of war as regards the civilian population. The old distinction between the fighters and the non-fighters was less pronounced in the late war than ever before. In the next war it will disappear entirely. Modern war is not a contest between opposing armies; it is a struggle between hostile peoples in which industrial and commercial operations are just as important as fleets and armies. The next war will involve the whole population of the powers involved, and complete destruction of armies, navies, and industrial resources will be the object. The civilian population will suffer quite as much as the members of the fighting forces.

The Cost of War

From seventy-five to ninety-five per cent. of every dollar expended by modern governments goes to meet the cost of past wars and the preparation for future wars. In 1920 the national government of the United States spent $5,289,572,848 to defray war costs, and only $398,139,900 for all other purposes. If it were not for war, taxes could be reduced fifty or seventy-five per cent., and we could still spend untold millions more than we do now for education, roads, scientific investigation, and other constructive purposes that would minister to the comfort and happiness of all. But of course the money cost is nothing compared to the loss of life and the terrible suffering, both spiritual and physical, that accompany war, and the unspeakable social and economic evils that follow in its wake.

CHAPTER XLVI

FOREIGN RELATIONS

Our foreign relations fall into two great classes—hostile relations and peaceful relations. When we are at war with another country, we have no dealing with it except such as have to do with the conduct of the war; but when we are at peace with a country, we are constantly dealing with it in many different ways. In time of peace we enter into treaties and agreements with foreign countries, we carry on commerce with them; we conduct negotiations and discussions with regard to matters in which we and they are interested; we look after the interests and affairs of our citizens abroad; and we engage in numerous social functions to show our courtesy and good feeling toward them. Peace is commonly said to be the normal relation of states, and war an abnormal relationship; but one sometimes wonders if it would not be more accurate to reverse this expression.

How Our Foreign Relations Are Conducted

Our foreign relations whether of war or peace, are in the hands of the President, the Senate, and Congress. It has been pointed out in earlier chapters that the power to declare war belongs to Congress, the power to make treaties and appoint diplomatic and consular representatives to the President and Senate, and the power to direct the work of our foreign representatives, receive and dismiss representatives from foreign countries, recognize new governments, and command the army and navy to the President alone. The business of making war against a foreign power is carried on by the President and Congress through the Department of War, the Department of Navy, and the military and naval services. The business of conducting our relations with foreign countries in time of peace is carried on through the Department of State and the foreign service.

Prior to May 24, 1924, the foreign service of the United States was divided into two branches, known as the diplomatic service

and the consular service. But by the Rogers Act, which was adopted on May 24, 1924, the diplomatic and consular services were consolidated, so that now the same person may perform both diplomatic and consular functions and transfers may be made from one service to another.

It is believed that this change will do much to increase the efficiency of our foreign service. The business of a diplomat is to represent his country abroad in political matters, such as the negotiation of treaties, the making of agreements, the transfer of official communications, etc. The business of a consul is to represent his country abroad in commercial matters, such as collection of commercial information, the assistance of merchants and seamen, and the adjustment of legal troubles in which shippers, merchants, and seamen may become involved. With the growth of international trade and the close relation between commercial and political affairs, it has become increasingly difficult to draw a sharp line between the functions of the diplomat and those of the consul.

There are several different grades of diplomatic and consular officials. The highest diplomatic rank is that of ambassador. We send ambassadors to all countries which we regard as of first importance. The second grade in the diplomatic service is that of minister. We send ministers to nearly all the second-rate powers. The third grade is minister resident. This is a special rank, and we have only one or two of them. The lowest grade in the diplomatic service is that of chargé d'affaires. These are officials temporarily in charge when there is a vacancy or when the ambassador or minister is absent from his post. In the consular service the grades are: (1) consul-general-at-large, (2) consul-general, and (3) consul. Consuls-general-at-large are traveling inspectors who supervise the consular system all over the world; consuls-general are stationed in a particular country and have general supervision over the consular service in that country or in a large section of it; consuls are stationed in important cities throughout the world to transact the daily routine business of the consular service. Vice-consuls and consular agents may be in any district to work under the direction of the consul.

American Foreign Policies

American foreign policies may be treated under three heads—policy in the Far East, policy in Latin America, and policy in Europe.

In the Far East we have always stood for what is called the "open door" policy. We have opposed the partitioning of China among the western powers, and have been equally opposed to Japanese domination of China. We have also stood for equality among the powers in regard to trade with China, and have opposed the granting of concessions and spheres of influence which would give some of the powers special advantages and privileges in commercial matters. We have also favored international coöperation in the lending of money to China, rather than the making of loans by the various powers separately and individually, and to that end we took the lead in 1918–20 in forming what is known as a "consortium", or arrangement whereby financiers representing several of the great powers participate proportionately in all loans made to China. We also took the lead in calling the great international conference which met at Washington in November, 1921, and took up the matter of naval disarmament and the adjustment of international relations in the Pacific. Out of that conference came several treaties of vast importance to the Far East. The Four-Power Treaty pledged Great Britain, the United States, France, and Japan to respect the existing situation in the Pacific and the Far East and to guarantee one another against disturbance of the present situation. The Nine-Power Treaty pledged the four above-named powers and Italy, Holland, Portugal, China, and Belgium to respect the principle of the "open door". The Shantung Treaty restored the Province of Shantung to China, and adjusted one of the great controversies of the Far East. Our relations with Japan have in general been cordial; but the adoption of the Japanese exclusion provision in the immigration law of 1924 has produced a strained situation.

With respect to the Latin American countries of this hemisphere we have assumed a somewhat paternalistic attitude. We have made it our business to protect them from aggression on the part of European and Asiatic powers and to see that they conduct their affairs in such a way as not to invite trouble with non-American powers. This attitude on our part has resulted from the Monroe Doctrine, which was promulgated by President Monroe in 1823. By the Monroe Doctrine we announced to the world that we would use all our power to oppose further colonization in the New World and to prevent any European power from oppressing any of the powers of this hemisphere or depriving it of its independence. We have always felt that the maintenance of the Monroe Doctrine was absolutely essential to our own peace and safety, and we have always

been ready to go to war in order to vindicate it. Unfortunately we have not been able to retain the confidence of the Latin American countries, and many of them believe that we are using the Monroe Doctrine as a means of saving them from European exploitation in order that we may exploit them ourselves. From the Latin American point of view the rapid extension of our colonial dominion in the Caribbean and our frequent interference in the domestic affairs of certain Latin American countries lends color to this belief.

In European affairs we have not and have never had a consistent policy, except that of avoiding all entangling alliances. We have scrupulously kept out of the European situation, and have tried to confine our relations with European powers to commercial matters, or matters affecting this hemisphere or the Far East. Until 1917 we were quite successful in this policy, and even when we were drawn into the Great War we refused to participate on the same basis as the other powers. Great Britain, France, Italy, Russia, Belgium, Greece, and Roumania were allies in the war, but we insisted that we should occupy the position of an associate rather than an allied power. That meant that we were not a party to any of the treaties and agreements among these powers and were not bound by any understandings which might exist among them.

But not even this attitude of political detachment and military coöperation could save us from much closer connection with European international politics than we had ever known before. We had to take a large part in the peace settlement, and to take a stand on many European questions which but a few years before we had regarded as of no concern to us. President Wilson played a decisive part in the formulation of the treaty of peace and was mainly responsible for the drafting of the covenant of the League of Nations. It seemed for a time that the United States was on the point of becoming an active participant in European affairs. But there was a revulsion of sentiment in this country, and we refused to ratify the peace treaty or enter the League of Nations. But though we turned our backs on the European situation we could not get rid of it.

The various European countries owe us about nine billions of dollars, and we found that there was no hope of collecting this money until there was a restoration of normal conditions in Europe. We discovered furthermore that the disturbed condition of European peoples had a very disastrous effect upon our own agriculture, trade, and industry. Hence we are beginning to turn our eyes again toward Europe. We joined in the work of the commission of experts

which was appointed in the winter of 1923–1924 to work out a solution of the question of German reparation payments, and we have also joined in the operation of the machinery which has been set up for carrying that plan into effect. We are very seriously considering membership in the World Court which has been set up under the League of Nations, and there are many who believe that we shall soon reverse our attitude toward the League of Nations itself.

The Question of International Peace

So long as the world is made up of a number of equal and independent states, there are bound to be disputes, controversies, and differences of interest and national ambition. But is it not possible to devise some means whereby these inevitable conflicts and differences may be settled without resort to war? Many people think not; they believe that war is unavoidable; and some extreme militarists are of the opinion that war is not an unmixed evil. But the great mass of mankind is of a different opinion. They abominate war, and believe it can be avoided. They may not understand how this can be done, but they are deeply interested in all proposals for the peaceful settlement of international disputes.

One of the oldest devices for the peaceful settlement of international controversies is arbitration. Arbitration is only possible when the contending countries voluntarily agree to refer the dispute to a third power or to a specially created board of arbitration, and to be bound by the decision handed down. There is no way to compel two countries to arbitrate a dispute. The so-called Hague Court of International Arbitration, which was established in 1907, is in reality not a court at all. It is a permanent list of judges appointed by the various countries who are parties to the Hague treaties, and from this list of judges countries which desire to arbitrate a dispute may proceed in a manner provided by the treaty to select a board of arbitration. It is impossible, however, to force contending countries to resort to the Hague Court. The Hague Court has been very useful and has settled a number of important controversies, but it has not been of much service in averting war because countries will not ordinarily submit to arbitration questions which they deem sufficiently important to fight about. The United States has entered into treaties with a number of countries whereby it is agreed that in case of a controversy the two parties will resort to arbitration before declaring war. As a rule, however, questions of national

honor and questions involving vital interests are excepted from the operation of these treaties.

The World Court, which has been set up under the League of Nations, differs from the Hague Court in that it is a real court. It consists of a number of permanent judges elected by the Assembly and the Council of the League, and these judges sit in all cases and devote their whole time to the work of the court. The Court has power to decide questions referred to it by the Assembly and the Council of the League. Most of the questions so referred have to do with the interpretation of the treaty of peace with Germany and the other central powers and the covenant of the League. The Court also has power to decide cases which may be referred to by the voluntary action of any two disputing powers. The World Court is very new and has as yet decided only a few cases of minor importance.

The League of Nations is an organization set up by the powers as part of the peace settlement in 1919. The League of Nations carries on its work through several different organs. First there is the Assembly, which consists of not more than three members from each country which has joined the League. Each country has one vote in the Assembly. Second, there is the Council, which consists of one representative from a restricted number of the larger powers which are members of the League. Each country has one vote in the Council. Third, there is the Permanent Secretariat, which is a secretarial organization to handle the correspondence and other routine business of the League. Fourth, there are a number of Permanent Commissions, which conduct investigations on certain subjects and report to the League. Fifth, there is the World Court, which was considered in the preceding paragraph. The headquarters of the League are at Geneva, Switzerland.

The purposes of the League are many. Whenever a matter threatens to disturb the peace of the world or is of vital interest to a large number of countries, it may be taken up by the Assembly or the Council of the League and action taken to preserve the peace or adjust the matter in a proper fashion. In important cases, however, all action taken by either body must be unanimous. The states which are members of the League agree to respect each other's territory and independence, to submit their disputes either to arbitration or to an inquiry by the Council; to refrain from going to war until three months after an award by a court of arbitration or a unanimous recommendation by the Council; to consider no treaty binding until it has been reported to the League; to break off all

economic and other relations with states which violate the covenants of the League; to join in applying force to members which violate the covenants of the League, if such is recommended by the Council; to exchange full information regarding their military and naval forces and programs; and to consider plans for the reduction of armaments as suggested by the Council. The League has had a checkered history so far. In some matters it has been highly successful, and in others it has all but failed. One of the chief reasons for the failures of the League has been that Great Britain, France, and Italy, which have been the dominant powers in the League, have in the past chosen to ignore it in most matters of supreme importance. There seems to be a tendency now on the part of the great powers to strengthen the League and to enhance its dignity and influence.

Another proposal to prevent war which has received a great deal of attention recently is the idea of outlawing war. Under international law war is perfectly legal, and the stigma of committing an illegal act cannot attach to a country which unjustifiably starts a war. It is believed that if war were made illegal, no country would want to be the aggressor because it would be in an indefensible position legally and would have none of the legal rights against neutral countries which countries at war now have. The League of Nations in 1924 proposed a protocol for the outlawry of war, but there does not seem to be much probability that it will be ratified in the near future.

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